

Wyong Shire Council

ORDINARY COUNCIL MEETING

ENCLOSURES

Wednesday, 25 September, 2013



WYONG SHIRE COUNCIL
ENCLOSURES TO THE
ORDINARY COUNCIL MEETING
TO BE HELD IN THE COUNCIL CHAMBER,
WYONG CIVIC CENTRE, HELY STREET, WYONG
ON WEDNESDAY, 25 SEPTEMBER 2013 ,
COMMENCING AT 5:00 PM

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Woongarra**
- Attachment 1:** Draft VPA variation - GP Superclinic 3
- 5.6 Draft Plan of Management and Management Plan covering Various
Foreshore Reserves**
- Attachment 1:** Draft Plan of Management No 16 - Foreshore Council
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North Entrance to Long Jetty 118
- 6.7 Woolworths Retail Facility - Warnervale Town Centre**
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Contact: Donna Ham - Tel: 4350 3333
Email: donnah@aubreybrown.com.au
Our Ref: ALC:lf 20 20835



18 June 2013

The General Manager
Wyong Shire Council
Attn: David Kitson
DX 7306 WYONG

Dear Sir/Madam,

**RE: WARNERVALE MEDICAL HOLDINGS PTY LTD
VOLUNTARY PLANNING AGREEMENT**

We refer to the above matter and the writer's telephone conversation with you this date. We now **enclose** Deed of Variation executed in triplicate. We note that you will now attend to having this Deed placed on exhibition.

We look forward to receipt of a copy of this Deed once it has been executed by Council.

Should you have any questions or wish to discuss this matter please do not hesitate to contact Donna Ham of our office.

Yours faithfully,
AUBREY BROWN PARTNERS

Per:

D. C. Ham

Encl.

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Also located at: Wyong

DEED OF VARIATION OF VOLUNTARY PLANNING AGREEMENT

PARTIES

Wyong Shire Council of Council Chambers, Hely Street, Wyong in the State of New South Wales ("Council")

The Trustees of the Roman Catholic Church of the Diocese of Broken Bay of Building 2, 423 Pennant Hills Road, Pennant Hills in the State of New South Wales ("the Church")

and

Warnervale Medical Holdings Pty Limited as trustee for the **Warnervale Medical Holdings Unit Trust** of PO Box 27, Toukley in the State of New South Wales ("the Developer")

BACKGROUND

- A. On 24 September 2010 the Parties entered in to the Voluntary Planning Agreement ("VPA"). The VPA makes provision for the payment of contributions to Council for the development of the Developer Land and related matters. The VPA does not provide for the staged payment of contributions to Council.
- B. At the time the Parties entered in to the VPA the Church owned the Church Land. Since that time the Church Land has been subdivided in to a number of lots, one of which is the Developer Land, and the Developer has purchased the Developer Land from the Church.
- C. The original Development Consent did not provide for staged development of the Developer Land. The Modified Consent, being a modification of the Development Consent, does provide for the staged development of the Developer Land. The Developer has completed Stage 1 of the Development on the Developer Land, pursuant to the Modified Consent.
- D. The effect of this Deed is to vary the VPA so as to permit the staged payment of developer contributions consistent with the staging permitted under the Modified Consent; to acknowledge that the Developer has paid the Previous Contributions; to provide for the return to the Developer of both the Bank Guarantee and the proportion of the Previous Contributions that relate to Stage 1; to remove the Church as a party to the Current VPA; and to make consequential modifications to the VPA.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed, unless express or implied to the contrary:

Act means the *Environmental Planning and Assessment Act 1979*;

Bank Guarantee means any guarantee paid to Council by the Developer pursuant to clause. 7 of the VPA;

Church means The Trustees of the Roman Catholic Church of the Diocese of Broken Bay;

Church Land means the land previously known as Lot 8 DP 7738;

Council means Wyong Shire Council;

Deed means this document and any annexures or schedules attached to this document;

Developer means Warnervale Medical Holdings Pty Limited as trustee for the Warnervale Medical Holdings Unit Trust;

Developer Land means Lot 3 in Deposited Plan 1155796, otherwise known as 85 Sparks Road, Woongarra;

Development means the development of the Developer Land that is permitted by the Modified Consent;

Development Consent means the conditional consent to the development application DA/1396/2009, granted on or about 29 June 2010;

Development Contributions Plan means the "Warnervale Town Centre Section 94 Development Contributions Plan", or any other similarly named document, that permits Council to require the payment of Monetary Contributions for development within the Warnervale Town Centre;

LPMA means the Land and Property Management Authority, or its successors or assigns;

Modified Consent means the Development Consent, as modified pursuant to s. 96 of the Act on 16 February 2011 (modification application DA/1396/2009/A), 5 September 2011 (modification application DA/1396/C) and 9 November 2011 (modification application DA/1396/D);

Occupation Certificate has the same meaning as in the Act;

Parties mean the parties to this Deed;

Party means a party to this Deed;

Previous Contributions means the monies paid to Council under the Current VPA, being the total sum of \$698,002.69 paid to Council on 16 October 2011;

Stage 1 means that part of the Development completed prior to this Deed, being Stage 1 of the Development as set out in the Modified Consent and as evidenced by Interim Occupation Certificate dated 24th August 2012 for Construction Certificate 861/2010/B, as per plan in Annexure "A" to this Deed;

Stage 2 means those parts of the Development other than Stage 1;

VPA means Planning Agreement dated 24 September 2010 between Council, the Church and the Developer, a copy of which is Annexure "B" to this Deed;

Warnervale Town Centre means an area of land within the local government area of Wyong Shire, and bounded by Hiawatha, Hakone and Sparks Roads and east of Bruce Crescent.

- 1.2 A word or phrase which is used in this Deed and is defined in the VPA, but is not defined in this Deed, has the meaning given to it in the VPA.
- 1.3 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
 - 1.1.1 The headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.1.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.1.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.

- 1.1.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.1.5 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.1.6 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.1.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.1.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.1.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.1.10 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular and a reference to any gender denotes the other genders, unless otherwise defined.
- 1.1.11 References to the word "include" or "including" are to be construed without limitation.
- 1.1.12 A reference to this Deed includes the agreement recorded in this Deed.
- 1.1.13 A reference to a party to this Deed includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- 1.1.14 The schedule to this Deed forms part of this Deed.

2. GOVENING LAW AND JURISDICTION

- 2.1 This Deed is governed by and is to be construed in accordance with the laws of New South Wales. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of New South Wales and waives any right to object to proceedings being brought in those Courts.

3. OPERATION

- 3.1 The parties agree that this Deed takes effect after the Parties have executed this Deed and on the date upon its registration in accordance with clause 7.1.

4. VARIATION

Variation

- 4.1 The Parties agree that the VPA be varied as follows with effect from the date of this Deed:
 - 4.1.1 by replacing all references in the VPA to the phrases "Owner", "Land" and "Proposed Lot 3" with "Church", "Church Land" and "Developer Land" respectively;
 - 4.1.2 In clause. 4.1 of the VPA the :
 - (a) Replace the definitions of "Bank Guarantee, "Development" and "Future Development": with the following:

Bank Guarantee means any guarantee paid to Council by the Developer pursuant to clause 7 of the unmodified version of this Agreement executed by the Parties on 24 September 2010;

Development means the development of the Developer Land that is permitted by the Modified Consent;

Future Development means any development on the developer land that is beyond the scope of the Modified Consent.

- (b) Insert the following additional definitions:

Developer Land means Lot 3 in Deposited Plan 1155796, otherwise known as 85 Sparks Road, Woongarra;

Modified Consent means the Development Consent, as modified pursuant to s. 96 of the Act on 16 February 2011 (modification application DA/1396/2009/A), 5 September 2011 (modification application DA/1396/C) and 9 November 2011 (modification application DA/1396/D);

Occupation Certificate has the same meaning as in the Act;

Previous Contributions means the monies paid to Council under the Current VPA, being the total sum of \$698,002.69 paid to Council on 16 October 2011;

Stage 1 means that part of the Development completed prior to this Agreement, being Stage 1 of the Development as set out in the Modified Consent and as evidenced by Interim Occupation Certificate dated 24th August 2012 for Construction Certificate 861/2010/B, as per plan in Attachment A to this Agreement.

Stage 2 means those parts of the Development other than Stage 1;

- (c) Delete the definitions of "Proposed Lot 3" and "Monetary Contributions".

4.1.3 Schedule 1 is deleted and replaced with the Schedule 1 of this Agreement;

4.1.4 Clause 5 is deleted and replaced with the following:

5 MONETARY CONTRIBUTIONS

5.1 The Developer and Council agree that:

- (a) The Developer paid the Previous Contributions to Council on 16 October 2011; and
- (b) As at November 2011 the indexed value of the Previous Contributions was \$719,111.64, of which \$602,415.78 related to Stage 1 and \$116,695.86 related to Stage 2; and
- (c) The Developer has met its obligation to pay developer contributions in respect to Stage 1 of the Development by the payment of the component of the Previous Contributions that the Developer and Council have agreed relate that Stage 1; and
- (d) Council will repay the sum calculated in accordance with the following formula to the Developer within 14 days of the date on which this clause becomes operative:

$$\text{Amount to be repaid} = \$116,695.64 \times \frac{\text{CPI-B}}{\text{CPI-A}}$$

where:

CPI-B is the Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the time of the repayment required by this clause 5.1(d);

CPI-A The Consumer Price Index Number (Sydney – All Groups) last published by the Australia Bureau of Statistics as at November 2012.

(e) The Developer and Council agree that the repayment that Council is required to make pursuant to cl. 5.1(d) is repayment of that part of the Previous Contributions that relates to Stage 2 of the Development.

5.2 The Developer agrees to pay to Council a monetary contribution calculated in accordance with the following in respect to Stage 2 of the Development, such payment to be paid prior to the issue of an Occupation Certificate in respect to Stage 2:

Developer contribution to be paid = \$455, 814.52 x $\frac{\text{CPI-C}}{\text{CPI-A}}$

where:

CPI-C is the Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the time of the contribution is to be paid by this clause 5.2);

CPI-A The Consumer Price Index Number (Sydney – All Groups) last published by the Australia Bureau of Statistics as at November 2012.

5.3 Council and the Developer agree that:

(a) no amendment will be made to the contributions required to be paid under this Agreement as a result of the adoption of any Development Contributions Plan; and

(b) Schedule 1 to this Agreement identifies the purposes for which the Previous Contribution and the contributions to be paid pursuant to clause. 5.2 are made.

5.4 In the event that the Modified Consent is further modified so that Stage 2 of the Development is to be completed in more than one stage then Council may give notice in writing to the Developer that permits the contributions that the Developer is required to pay to Council pursuant to cl. 5.2 to be paid by way of instalments. The Developer acknowledges that Council has an absolute discretion whether it gives any such notice and as to the content of that notice.

4.1.6 Clause 6 is deleted.

4.1.7 Clause 7 is deleted.

4.1.8 Clause 8.1 is deleted and replaced with the following

8.1 *The parties agree that:*

- (a) *Nothing in this Agreement operates to fetter, in any way, Council's ability to impose on any grant of consent for Future Development of the Developer Land a condition requiring the making of a contribution for the purpose of s. 94 and/or 94A of the Act; and:*
- (b) *Nothing in this Agreement operates to confer any credit to the Developer or any other person in respect to any Future Development of the Developer Land.*

Affirmation

4.2 Other than the variation to the VPA given effect by this Agreement, the Parties ratify and affirm the VPA in all other respects.

5. RETURN OF BANK GUARANTEE

Council will return the Bank Guarantee to the Developer within fourteen (14) days of the date on which this Deed becomes operative.

6. RELEASE

Release of the Church

6.1 The Parties acknowledge and agree that the Church has met its obligations under the VPA.

6.2 The Parties agree that as from the date of this Deed, Council and the Developer release and discharge the Church from all its obligations under VPA and agree:

- (a) not to make any claim or demand or commence any action or proceedings against the Church in respect of the VPA; and
- (b) that this Deed may be pleaded in bar in any such action or proceeding.

Release of Council and Developer

6.3 The Church releases Council and the Developer from all claims arising under the VPA as from the date of this Agreement.

7. REGISTRATION

- 7.1 The Developer agrees to procure, at no cost to Council, the registration of this Agreement pursuant to section 93H of the Act on the relevant folios of the Register pertaining to the Land as soon as practicable following the execution of this Agreement. This obligation includes the Developer procuring, at no cost to Council, the written consent of any mortgagee or other person holding an interest in the Developer Land that is necessary to effect the registration required by this clause.

8. COSTS

- 8.1 The Developer agrees to pay all of its costs (inclusive of GST) in connection with this Agreement, including the negotiation and execution of this agreement, all legal advice and costs associated with this Agreement, and the registration of this agreement in accordance with clause 8 of this Agreement.
- 8.2 The Developer agrees to pay to Council the sum of \$5,500 (inclusive of GST) towards the negotiation, preparation, processing and execution of this agreement. This payment may be deducted by Council from any amount that Council is required to pay to the Developer pursuant to clause 5.1(d) of Current VPA, as modified by clause. 5 of this Agreement.

SCHEDULE 1

Amount and Timing of Monetary Contributions

Item	Description	Rate as of May 2010	Factor	Amount Required Under Current VPA (as of M 07 2010)	Previous Contributions Paid (10/9/2011)	Previous Contributions Paid Indexed to November 2012	Total Amount required to be paid under this Agreement Indexed to November 2012	Rationale for stage 1 payments	Stage 1 %	Payment required for Stage 1	Required to be paid prior to issue of the construction certificate for Stage 2
Integrated Water Cycle Management and Drainage											
NDA											
1	Integrated Water Cycle Management	\$ 27,098.00	1.348	\$ 36,525.45			\$39,215	Relates to total land area	100%	\$ 39,215.44	\$ -
2	Drainage and Water Quality - Land	\$ 34,784.00	1.348	\$ 46,883.83			\$50,337	Relates to total land area	100%	\$ 50,336.64	\$ -
3	Drainage and Water Quality - Works	\$ 58,650.00	1.348	\$ 79,062.20			\$84,873	Relates to total land area	100%	\$ 84,873.40	\$ -
Studies, Valuations and Administration											
NDA											
4	Studies and Land Valuations	\$ 2,710.00	1.348	\$ 3,653.08			\$3,922	Relates to total land area	100%	\$ 3,921.69	\$ -
5	Plan Administration	\$ 2,292.00	1.348	\$ 3,093.62			\$3,317	Relates to total land area	100%	\$ 3,316.79	\$ -
Sub-Total											
\$ 1,125,536.00											
\$ 1,097,221.18											
Roadworks											
DVT's											
6	Sparks Road/Minnesota Road Intersection	\$ 47.40	2170	\$ 102,950.00			\$110,421	based on 48% of total traffic generation.	48%	\$ 53,002.12	\$ 67,410.97
7	Sparks Road/Entrance Drive Intersection	\$ 48.12	2,170	\$ 104,420.40				Now being paid for by the State Govt.	0%	\$ -	\$ -
8	Link Road Stage 1	\$ 51.44	2,170	\$ 111,624.80			\$119,833	based on 48% of total traffic generation	48%	\$ 57,519.60	\$ 62,312.90
9	Link Road Stage 2	\$ 139.07	2,170	\$ 301,781.90			\$329,572	based on 48% of total traffic generation	48%	\$ 155,508.44	\$ 189,485.31
10	Sparks Road Pedestrian Facilities at Railway Overpass	\$ 4.98	2,170	\$ 10,815.60			\$10,802	based on 48% of total traffic generation	48%	\$ 5,233.12	\$ 5,669.21
11	Malaram/Hawalla Road Intersection	\$ 10.45	2,170	\$ 22,676.50			\$24,344	based on 48% of total traffic generation	48%	\$ 11,685.07	\$ 12,658.82
12	Entrance Drive Intersection	\$ 31.35	2,170	\$ 68,029.50			\$73,020	based on 48% of total traffic generation	48%	\$ 35,055.20	\$ 37,976.47
13	Pacific Highway/Chainsford Road Intersection	\$ 15.60	2,170	\$ 33,852.00			\$36,241	based on 48% of total traffic generation	48%	\$ 17,443.74	\$ 18,897.38
14	Sub-Arterial/Railway Station Intersection	\$ 42.38	2,170	\$ 91,984.60			\$93,727	based on 48% of total traffic generation	48%	\$ 47,388.82	\$ 51,337.69
15	Chainsford Road/Arizona Road Intersection	\$ 33.91	2,170	\$ 73,584.70			\$73,995	based on 48% of total traffic generation	48%	\$ 37,917.76	\$ 41,077.58
16	Roadworks and Traffic Management - Future Development	\$ TBA	TBA				\$0				
Sub-Total											
\$ 424,418											
\$ 406,758.16											
TOTAL											
\$ 1,503,939.31											
\$ 1,090,479.34											
Proposed Refund											
\$ 116,655.88											
Costs as per Clause 17 of this Agreement											
\$ 5,670.00											
Refund, less costs above											
\$ 111,193.98											

EXECUTED as a DEED

Date:

Executed for and on behalf of Wyong Shire Council:

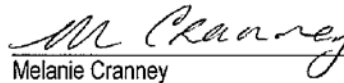
Signature of General Manager

Signature of Witness

Michael Whittaker

Name

Executed for and on behalf of Warnervale Medical Holdings Pty Limited as trustee of the Warnervale Medical Holdings Unit Trust in accordance with section 127(1) of the Corporations Act:



Melanie Cranney
Sole Director

The common seal of **The Trustees**)
of the Roman Catholic Church for)
the Diocese of Broken Bay)
ABN: 79 031 652 544 was hereunto)
affixed in pursuance of a resolution)
passed at a meeting of the said Body)
Corporate in the presence of the Bishop)
and two other members thereof all of)
whose signatures are set opposite hereto:)

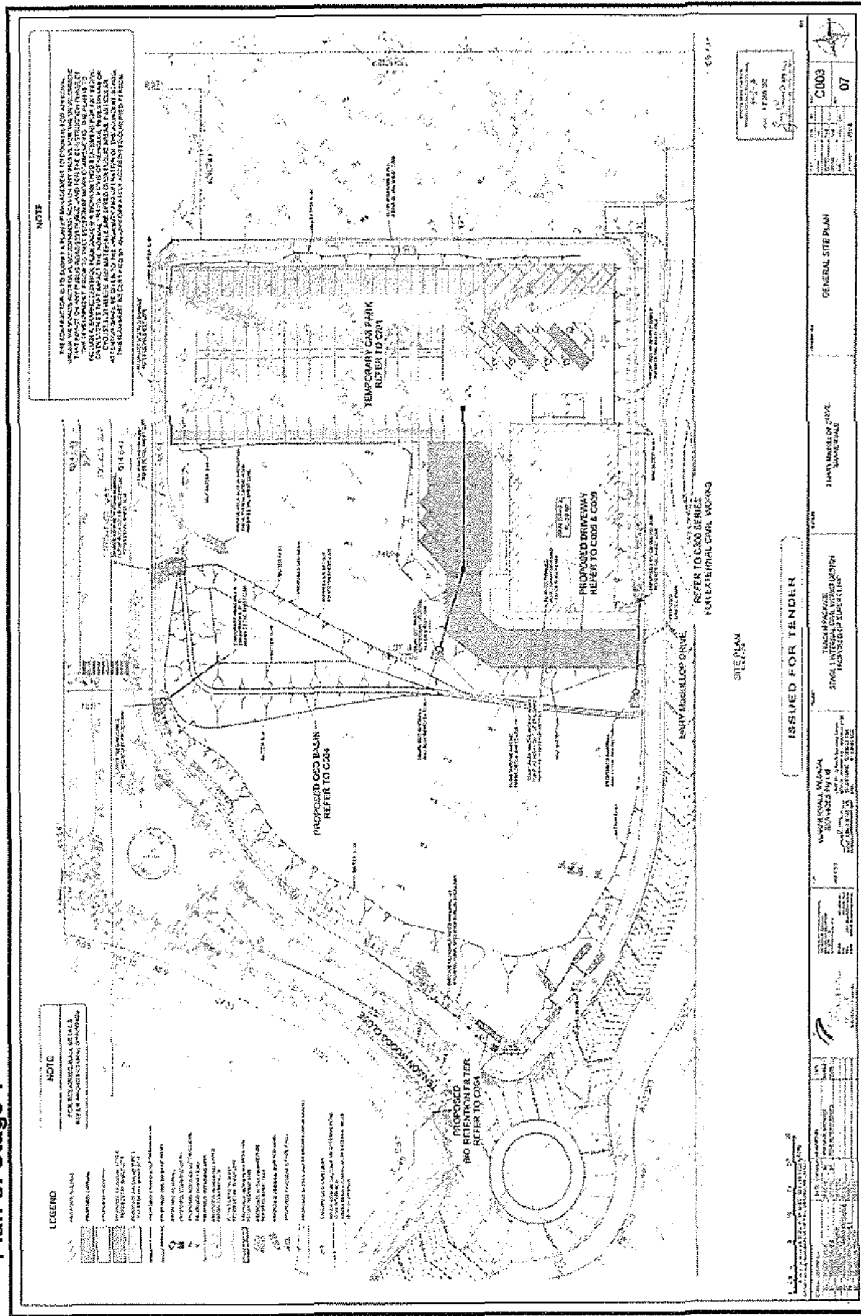
.....
Bishop

.....
Member

.....
Member

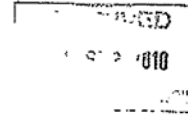
ANNEXURE A

Plan of Stage 1



ANNEXURE B

Council Reference LDOC009115



VOLUNTARY PLANNING AGREEMENT

Wyong Shire Council (ABN 47 054 613 735)

And

The Trustees of the Roman Catholic Church of the Diocese of Broken Bay
(ABN 79 031 652 544)

And

Warnervale Medical Holdings Pty Limited (ACN 140069889) as trustee for
Warnervale Medical Holdings Unit Trust (ABN 92 338 068 421)

Final v1 16 June 2010

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PLANNING AGREEMENT

DATE 19-2010

PARTIES

Wyong Shire Council of Council Chambers, Hely Street, Wyong in the State of New South Wales ("Council")

and

The Trustees of the Roman Catholic Church of the Diocese of Broken Bay of Building 2, 423 Pennant Hills Road, Pennant Hills in the State of New South Wales ("the Owner")

and

Warnervale Medical Holdings Pty Limited as trustee for the Warnervale Medical Holdings Unit Trust of PO Box 27, Toukley in the State of New South Wales ("the Developer")

BACKGROUND

- a. The Owner has lodged a development application with Council for the subdivision of the Land. If consent is granted by Council to that application, the Owner intends selling Proposed Lot 3 of that subdivision to the Developer.
- b. The Developer has lodged the Development Application with Council to develop Proposed Lot 3 for a health services facility (General Practitioner super clinic) and associated facilities, including carparking and strata subdivision.
- c. The Developer acknowledges that the Development generates the need to upgrade existing and/or provide new local community infrastructure.
- d. The Warnervale Town Centre Development Contributions Plan has not been adopted and the Developer has offered to enter into this Agreement to pay Council Monetary Contributions towards various categories of local community infrastructure.
- e. The Developer intends to carry out the Future Development of the Land, subject to Council approval.

OPERATIVE PROVISIONS**1 PLANNING AGREEMENT UNDER THE ACT**

- 1.1 The parties agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2 APPLICATION OF THIS AGREEMENT

- 2.1 This Agreement applies to the Land.

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3 OPERATION OF THIS AGREEMENT

3.1 Subject to clause 3.2, this Agreement takes effect once executed by all parties.

3.2 Clauses 5 and 6 of this Agreement will only operate if and when:

- (a) the subdivision of the Land has been approved;
- (b) the purchase of proposed Lot 3 by the Developer has been completed, or the Developer has been granted exclusive possession of Proposed Lot 3; and
- (c) the Development Consent is granted.

3.3 This Agreement identifies the arrangements with regards to the payment of Monetary Contributions towards off-site community infrastructure.

4 DEFINITIONS AND INTERPRETATION

4.1 In this Agreement the following definitions apply:

Act means the Environmental Planning and Assessment Act 1979 (NSW);

Authority means Council, the NSW Department of Environment, Climate Change and Water (DECCW), the NSW Department of Planning (DoP), the NSW Roads and Traffic Authority (RTA) and any heirs and successors of those organisations;

Bank Guarantee means an unconditional and irrevocable undertaking issued by a major Australian bank in favour of Council in a form acceptable to Council (acting reasonably) to pay on demand the amount specified in the guarantee;

Concept Plan/s means the plan/s at Annexure A to this Agreement;

Council means Wyong Shire Council or its representatives or assigns;

Deal, Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or disencumbering or otherwise dealing with the Land;

Developer means Warnervale Medical Holdings Pty Limited as trustee for the Warnervale Medical Holdings Unit Trust or its representatives or assigns;

Development means the development of the Land as shown on the Concept Plan/s and the Development Application;

Development Application means the Development shown in development application No. 1396/2009 lodged with Council;

Development Consent means any consent issued by or on behalf of Council in relation to Development Application 1396/2009;

Development Contributions Plan means the Warnervale Town Centre Section 94 Development Contributions Plan, or any other similarly named document, that permits Council to require the payment of Monetary Contributions for development within the Warnervale Town Centre;

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Future Development means the development of those portions of the Concept Plan/s which are hatched and entitled "Future Development" within Proposed Lot 3. The future development of Proposed Lot 3 is understood to involve a private hospital which will generate additional traffic and therefore a need to contribute to surrounding road and intersection upgrades;

Land means Lot 8 DP 7738 – otherwise known as 85 Sparks Road, Woongarra;

LPMA means the Land and Property Management Authority, or its successors or assigns;

Minister means the Minister administering the Act, from time to time;

Monetary Contributions means the monetary contributions specified at clause 5 and in Schedule 1 of this Agreement;

Owner means the Trustees of the Roman Catholic Church of the Diocese of Broken Bay or its representatives or assigns;

Parties mean the Council, the Owner and the Developer, including their successors and assigns;

Party means a party to this Agreement including its successors and assigns;

Proposed Lot 3 means the portion of the Land identified Part 3 in the Concept Plan/s;

Regulation means the Environmental Planning and Assessment Regulation 2000;

Roads mean those roadwork and intersection upgrade projects identified as Items 6-15 in the table in Schedule 1.

Warnervale Town Centre means an area of land within the local government area of Wyong Shire, and bounded by Hiawatha, Hakone and Sparks Roads and east of Bruce Crescent.

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) The headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

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- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular and a reference to any gender denotes the other genders, unless otherwise defined.
- (k) References to the word "include" or "including" are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) The schedule to this Agreement forms part of this Agreement.

5 PAYMENT OF THE MONETARY CONTRIBUTIONS

- 5.1 The Developer agrees to pay the Monetary Contributions to Council in the amounts specified (including any indexation costs calculated in accordance with clause 6), and by the times specified in Schedule 1 of this Agreement.
- 5.2 Where a Development Contributions Plan has been adopted by Council for the Warnervale Town Centre, and no payment to Council of any of the Monetary Contributions has been made, the amount of Monetary Contributions payable under this Agreement will only be in accordance with the amounts specified at Schedule 1 of this Agreement where the total contributions as calculated by Council as payable under the Warnervale Town Centre Contributions Plan are greater than those required in total under Schedule 1.
- 5.3 In circumstances where clause 5.2 applies, and the total contributions as calculated by Council as payable under the Development Contributions Plan are less than the total Monetary Contributions payable pursuant to Schedule 1, then the Developer can choose to pay the contributions under the Development Contributions Plan in lieu of the Monetary Contribution amounts specified in Schedule 1, as applicable. Nonetheless, the times specified for payment of Monetary Contribution amounts under Schedule 1 remain as specified in that Schedule.
- 5.4 For the avoidance of doubt, where Monetary Contributions have been paid under this Agreement, and the Development Contributions Plan has not been adopted at the time of payment, the Developer agrees that those Monetary Contributions paid will not be revised or refunded, and all Monetary Contributions as required by the terms of Schedule 1 to this Agreement are to be paid, even if the Development Contributions Plan at a later point in time allows or permits lesser contributions.
- 5.5 The Parties agree that Monetary Contributions for Roads for any Future Development will be calculated, levied and paid in accordance with the following formula and at the times specified in Schedule 1:

$R \times \text{DVTs}$

Where:

R Rate per DVT of \$424.40 (indexed in accordance with clause 6)

DVTs Number of daily vehicles trips generated by the Future Development, as determined by Council in consultation with the Developer.

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6 INDEXATION OF AMOUNTS PAYABLE BY THE PARTIES

- 6.1 The Monetary Contributions payable under this Agreement (including all upper limit amounts) are to be indexed from the date of execution of this Agreement in accordance with the following formula:

$$C \times \frac{\text{CPI 2}}{\text{CPI 1}}$$

Where:

C	The original value of the Monetary Contribution identified in this Agreement
CPI 2	The Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the time of payment
CPI 1	The Consumer Price Index Number (Sydney – All Groups) last published by the Australia Bureau of Statistics at the date of execution of the Planning Agreement

7 SECURITY

- 7.1 The Developer will lodge with Council a Bank Guarantee to the value of \$60,000.00 within 10 business days after execution of this Agreement.
- 7.2 If any of the Monetary Contributions are not paid in full by the times specified in Schedule 1, Council may call upon the Bank Guarantee without reference to the Developer, and apply that money as a payment or part payment of the outstanding Monetary Contributions, but without prejudice to any other rights Council has (under this Agreement or otherwise) to pursue outstanding Monetary Contributions
- 7.3 Council agrees to discharge the Bank Guarantee when the Monetary Contributions have been paid in full for Items 1-15.

8 APPLICATION OF SECTION 94 & 94A OF THE ACT TO THE DEVELOPMENT

- 8.1 The Parties agree that Council is excluded from applying a condition of consent of the nature referred to in section 94 or 94A(1) of the Act in relation to Future Development of Proposed Lot 3, except as provided for in clause 5.5 of this agreement.
- 8.2 The Parties agree that Council retains the right to levy water and sewer charges against the Development and Future Development of Proposed Lot 3 pursuant to Section 306 of the Water Management Act 2000.

9 REGISTRATION OF THIS AGREEMENT

- 9.1 The Owner and Developer agree to procure the registration of this Agreement pursuant to section 93H of the Act on the relevant folios of the Register pertaining to the Land as soon as practicable following execution of this Agreement and obtain the written consent of any mortgagee or other person with an interest in the Land to such registration.

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To that end the Owner and Developer agree to deliver to the Council within 7 working days of the date of execution of this agreement, all necessary documents in registrable form to enable Council to lodge those documents at LPMA and obtain immediate registration of this agreement on the title to the Land.

- 9.2 Council agrees that once the plan of subdivision creating Proposed Lot 3 has been registered, it will consent to have this Agreement removed from the remainder of the Land, such that this Agreement will only apply to the newly created Lot 3.

10 DEVELOPER & OWNER WARRANTIES AND INDEMNITIES

- 10.1 The Developer warrants to Council that:

- (a) It intends to purchase Proposed Lot 3 from the Owner;
- (b) It is able to fully comply with its obligations under this Agreement;
- (c) It has full capacity to enter into this Agreement; and
- (d) There is no legal impediment to it entering into this Agreement, or performing its obligations under it.

- 10.2 The Developer guarantees to Council the due and punctual payment of all moneys due and payable or from time to time due and payable to Council by the Developer pursuant to or in connection with this Agreement.

- 10.3 The Developer agrees that Council is not required to proceed against the Developer or exhaust any remedies it may have in relation to the Developer or enforce any security it may hold with respect to the Developer's obligations, but is entitled to demand and receive payment when any payment is due under this Agreement.

- 10.4 The Owner warrants that it will promptly register with LPMA the relevant plans of subdivision following the grant of any development consent so as to enable it to sell Proposed Lot 3 to the Developer.

11 REVIEW OF THIS AGREEMENT

- 11.1 Any amendments, variation or modification to or of, or consent to any departure by any party from the terms of this Agreement shall have no force or effect unless effected by a document executed by the parties which complies with the requirements of Section 93G of the Act.

- 11.2 Each of the Parties individually reserves the right to review this Agreement if and when there is a grant of approval for a modification to the Development Consent.

12 DISPUTE RESOLUTION

- 12.1 If a dispute arises out of or relates to this Agreement (including any dispute as to the meaning, performance, validity, subject matter, breach or termination of this Agreement or as to any claim in tort, in equity or pursuant to any statute) (**Dispute**), any court or arbitration proceedings shall not be commenced by or against Council, the Developer or their successors or assigns, relating to the Dispute unless the parties to the Dispute (**Parties**) have complied with this clause, except where a party seeks urgent interlocutory relief.

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- 12.2 A party claiming that a Dispute has arisen under or in relation to this Agreement is to give written notice to the other parties to the Dispute, specifying the nature of the Dispute.
- (i) The Parties agree to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and to take action to have the Dispute mediated within 7 working days of the receipt of written notice of the Dispute.
 - (ii) The Parties agree that the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.
 - (iii) The Parties to the mediation will be jointly responsible for the fees of the mediation and each party shall bear its own costs.
 - (iv) The Parties may, but are not required, to enter into a written agreement before mediating a Dispute.
 - (v) If any procedural aspects are not specified sufficiently in the rules under clause 12.1, the Parties agree to conduct the mediation regarding those aspects in accordance with the determination of the mediator whose decision regarding those aspects is final and binding on the Parties.
 - (vi) A legal representative acting for either of the Parties may participate in the mediation.
- 12.3 From the time when a notice of Dispute is served, neither party shall take action to terminate this Agreement, until after the conclusion of the mediation.
- 12.4 Should mediation fail to resolve any dispute then the dispute shall be determined by arbitration pursuant to the Commercial Arbitration Act 1984 and the General Manager of the Council shall request the President for the time being of The Law Society of New South Wales to appoint an arbitrator to carry out such arbitration in accordance with the provisions of such Act.
- 12.5 Despite clauses 12.1, 12.2, 12.3 and 12.4, either Council or one or more of the Developers may institute court proceedings to seek urgent equitable relief in relation to a dispute or difference arising out of or in connection with this Agreement.

13 NOTICES

- 13.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below
- (b) Faxed or emailed to that Party at the relevant details set out below

- (i) Council: Wyong Shire Council
Attention: Senior Contributions Officer
Address: DX 7306 WYONG
Fax No: (02) 4350 2098
Email: wesley.wilson@wyong.nsw.gov.au

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(ii) Owner: The Trustees of the Roman Catholic Church of the Diocese of Broken Bay
 Attention: Karl Henry, Property Manager
 Address: PO Box 340, Pennant Hills, NSW, 1715
 Fax No: (02) 9847 0501

(iii) Developer: Warnervale Medical Holdings Pty Limited
 Attention: Denise Barrett or Peter Buckingham-Jones
 Address: PO Box 27, Toukley, NSW, 2263
 Fax No: (02) 4397 2544
 Email: denise.barrett@toukleydoctors.com.au or
peter.buckinghamjones@toukleydoctors.com.au

- 13.2 If a party gives the other party 3 working days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.
- 13.3 Any notice, consent, information, application or request is to be treated or given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, 2 working days after it is posted.
 - (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 13.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if it is on a business day, after 5.00pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

14 APPROVALS AND CONSENT

- 14.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, Council may give or withhold an approval or consent to be given under this Agreement in Council's absolute discretion and subject to any conditions determined by the Council. Council is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

15 ASSIGNMENT AND DEALINGS

- 15.1 The Developer and Owner agree with Council that they will not Deal, transfer or mortgage their interest in the Land prior to the registration of this Agreement as a Planning Agreement upon the title of the Land as contemplated in clause 9 of this Agreement.
- 15.2 Notwithstanding this clause, Council will not unreasonably withhold its consent to any transfer or mortgage provided that the proposed transferee or mortgagee consents on terms acceptable to Council to permit and facilitate registration of this Agreement at LPMA in the manner contemplated in clause 9.
- 15.3 The Developer and Owner agree that they will not lodge any caveat or other instrument upon the title of the Land which will prohibit or hinder registration of this Agreement at LPMA in the manner contemplated in clause 9 of this Agreement.

16 COSTS

16.1 The Developer agrees to pay or reimburse the costs of Council in connection with the:

- (a) Negotiation, preparation and execution of this planning agreement, to a *maximum* of \$5,000.00;
- (b) Advertising and exhibiting this planning agreement in accordance with the Act, to a maximum of \$215.00, and
- (c) Registration of this planning agreement,

within 7 working days after receipt of a tax invoice from Council.

17 ENTIRE AGREEMENT

17.1 This Agreement contains everything to which the parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party before this Agreement was executed, except as permitted by law.

18 FURTHER ACTS

18.1 Each Party agrees to promptly execute all documents and do all such things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

19 GOVERNING LAW AND JURISDICTION

19.1 This Agreement is governed by the law of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of its Courts and Courts of appeal from them. The parties will not object to the exercise of jurisdiction by those Courts on any basis provided that the dispute resolution provisions in clause 12 of this Agreement have first been satisfied.

20 JOINT AND INDIVIDUAL LIABILITY AND BENEFITS

20.1 Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

21 NO FETTER

21.1 Nothing in this Agreement is to be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

22 SEVERABILITY

22.1 If a clause or part of a clause in this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of the Agreement is not affected.

23 WAIVER

23.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.



Handwritten signatures and initials: DR, J.H.W., BK, VRC

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SCHEDULE 1**Amount and Timing of Monetary Contributions**

Item	Description	Rate	Factor	Amount	Timing
Integrated Water Cycle Management and Drainage					
1	Integrated Water Cycle Management	\$27,099	1.348ha	\$36,529.45	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
2	Drainage and Water Quality – Land	\$34,784	1.348ha	\$46,888.83	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
3	Drainage and Water Quality – Works	\$58,650	1.348ha	\$79,060.20	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
Studies, Valuations and Administration					
4	Studies and Land Valuations	\$2,710	1.348ha	\$3,653.08	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
5	Plan Administration	\$2,292	1.348ha	\$3,089.62	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
Sub-Total		\$125,535	1.348ha	\$169,221	
Roadworks and Traffic Management					
6	Sparks Road/Minnesota Road Intersection	\$47.40	2,170 DVTs	\$102,858	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
7	Sparks Road/Entrance Drive Intersection	\$48.12	2,170 DVTs	\$104,420	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
8	Link Road Stage 1	\$51.44	2,170 DVTs	\$111,625	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
9	Link Road Stage 2	\$139.07	2,170 DVTs	\$301,782	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent

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10	Sparks Road Pedestrian Facilities at Railway Overpass	\$4.68	2,170 DVTs	\$10,156	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
11	Mataram/Hiawatha Road Intersection	\$10.45	2,170 DVTs	\$22,677	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
12	Entrance Drive Intersection	\$31.35	2,170 DVTs	\$68,030	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
13	Pacific Highway/Chelmsford Road Intersection	\$15.60	2,170 DVTs	\$33,852	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
14	Sub-Arterial/Railway Station Intersection	\$42.38	2,170 DVTs	\$91,965	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
15	Chelmsford Road/Arizona Road Intersection	\$33.91	2,170 DVTs	\$73,585	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
16	Roadworks and Traffic Management – Future Development	\$TBA	TBA	\$TBA	Prior to the issue of the first Construction Certificate for the Future Development, as authorised by a consent
Sub-Total:		\$424.40		\$920,950	
TOTAL:				\$1,090,171	

*As at May 2010 – to be indexed at time of payment in accordance with formula in clause 6

Handwritten signatures and initials:
 JR
 VRC
~~JD~~
 S. J. ...

EXECUTED as an agreement

Date: 24.09.2010

Executed for and on behalf of Wyong Shire Council:

Signature of Director Shire Planning

Gina Vereker

Signature of Witness

Name

Wesley Wilson

Executed for and on behalf of The Trustees of Roman Catholic Church of the Diocese of Broken Bay in accordance with section 127(1) of the Corporations Act:



Director/Secretary (if not Sole Director)

Name [BLOCK LETTERS]

David L. Walker
BISHOP DAVID L. WALKER
VAFRC Jack Robson
Director/Sole Director

VINCENT R. CASBY
Name [BLOCK LETTERS]

JACK ROBSON
Name [BLOCK LETTERS]

Executed for and on behalf of Warnervale Medical Holdings Pty Limited as trustee of the Warnervale Medical Holdings Unit Trust in accordance with section 127(1) of the Corporations Act:

Director/Secretary (if not Sole Director)

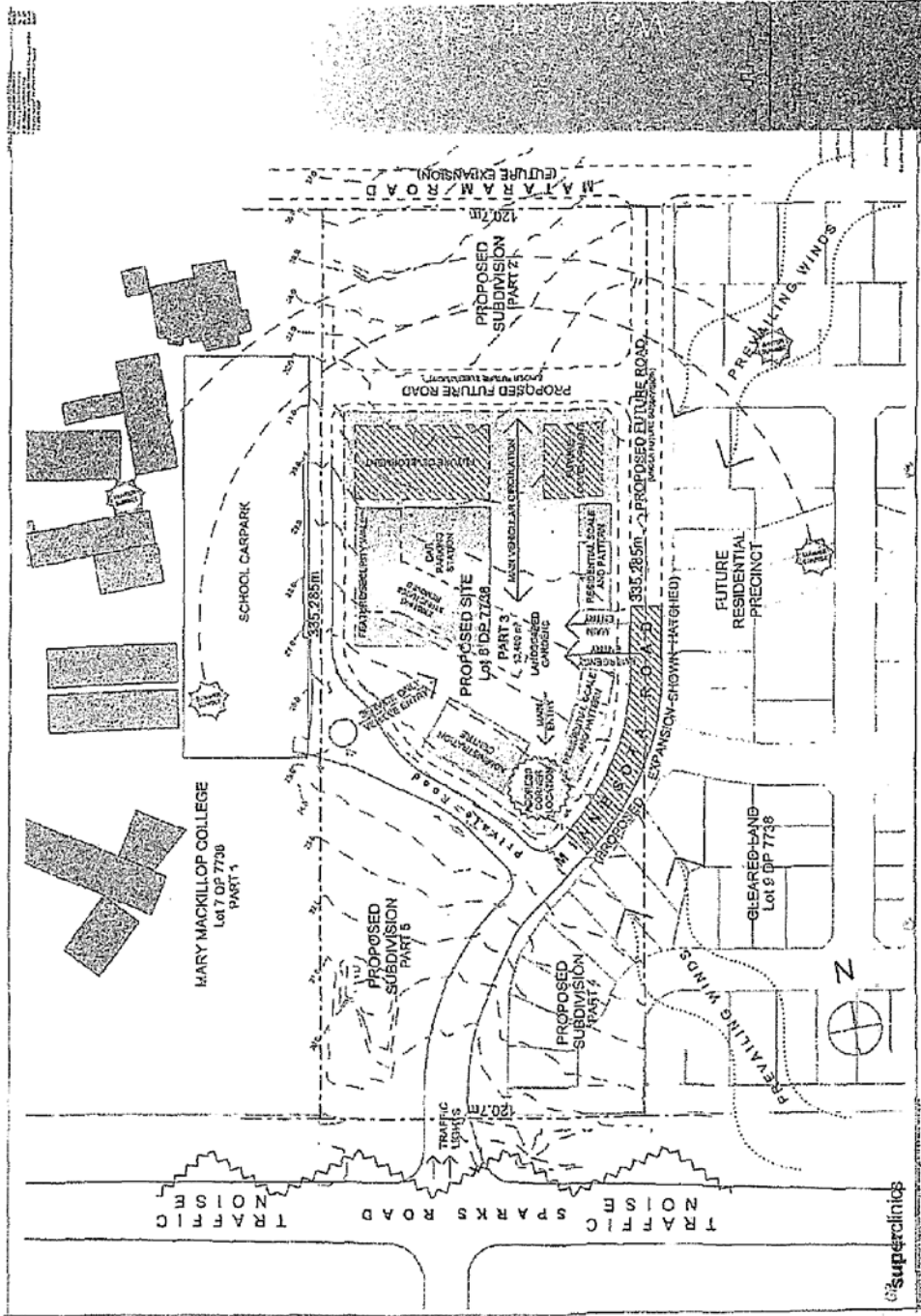
Name [BLOCK LETTERS]

Director/Sole Director

BRADLEY STEPHEN CANNON
Name [BLOCK LETTERS]

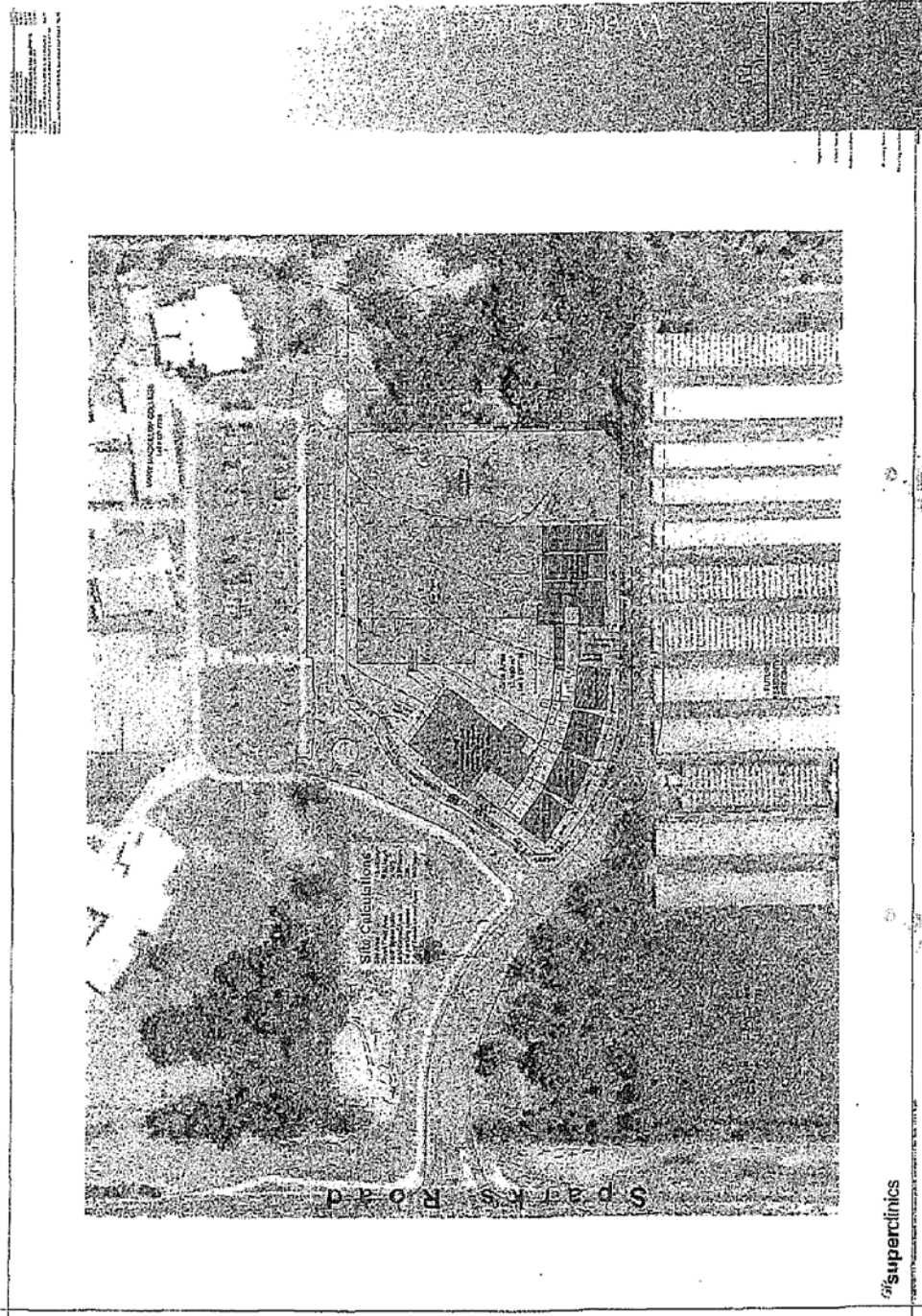
ANNEXURE A

Concept Plan/s



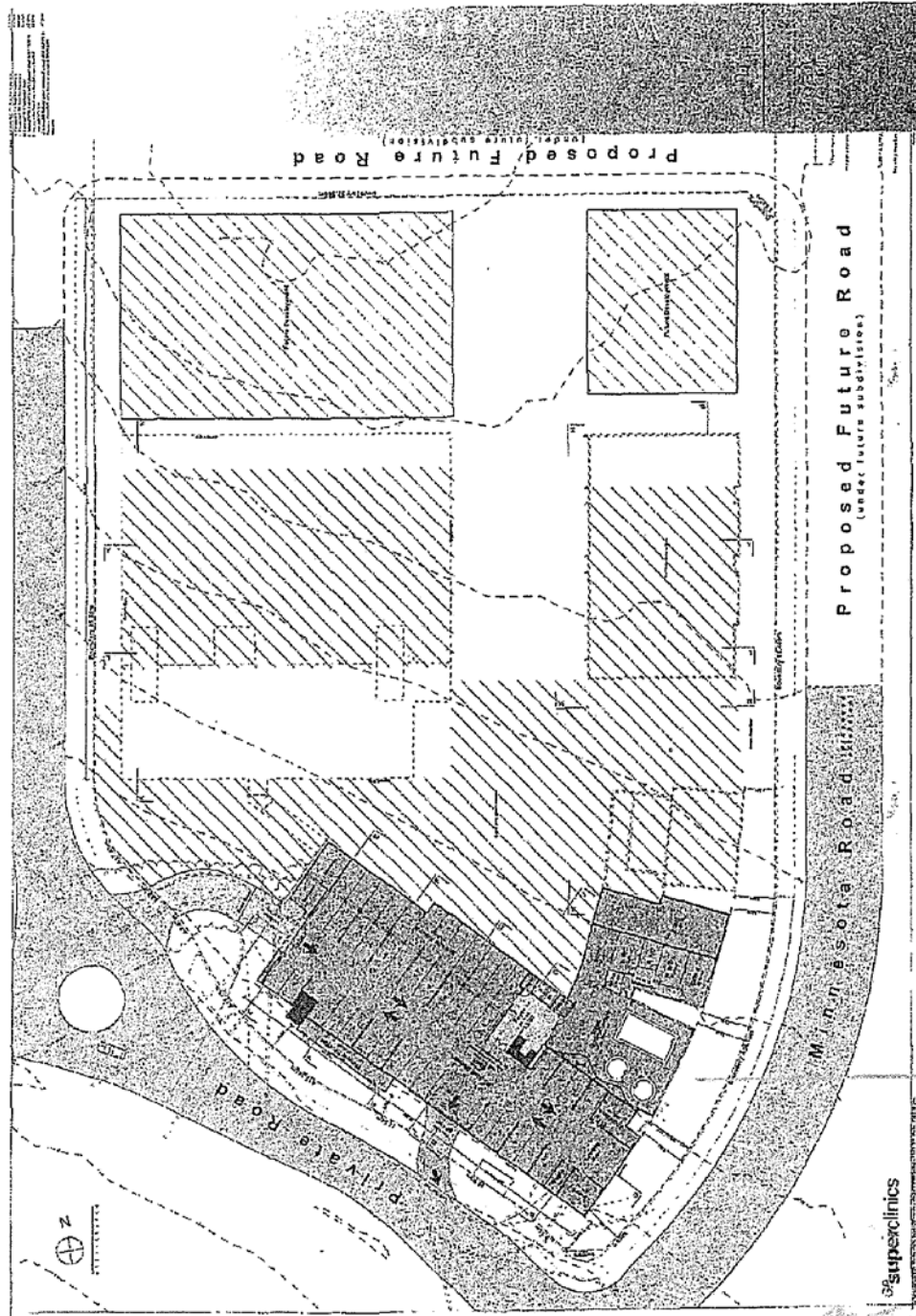
Final v1 16 June 2010

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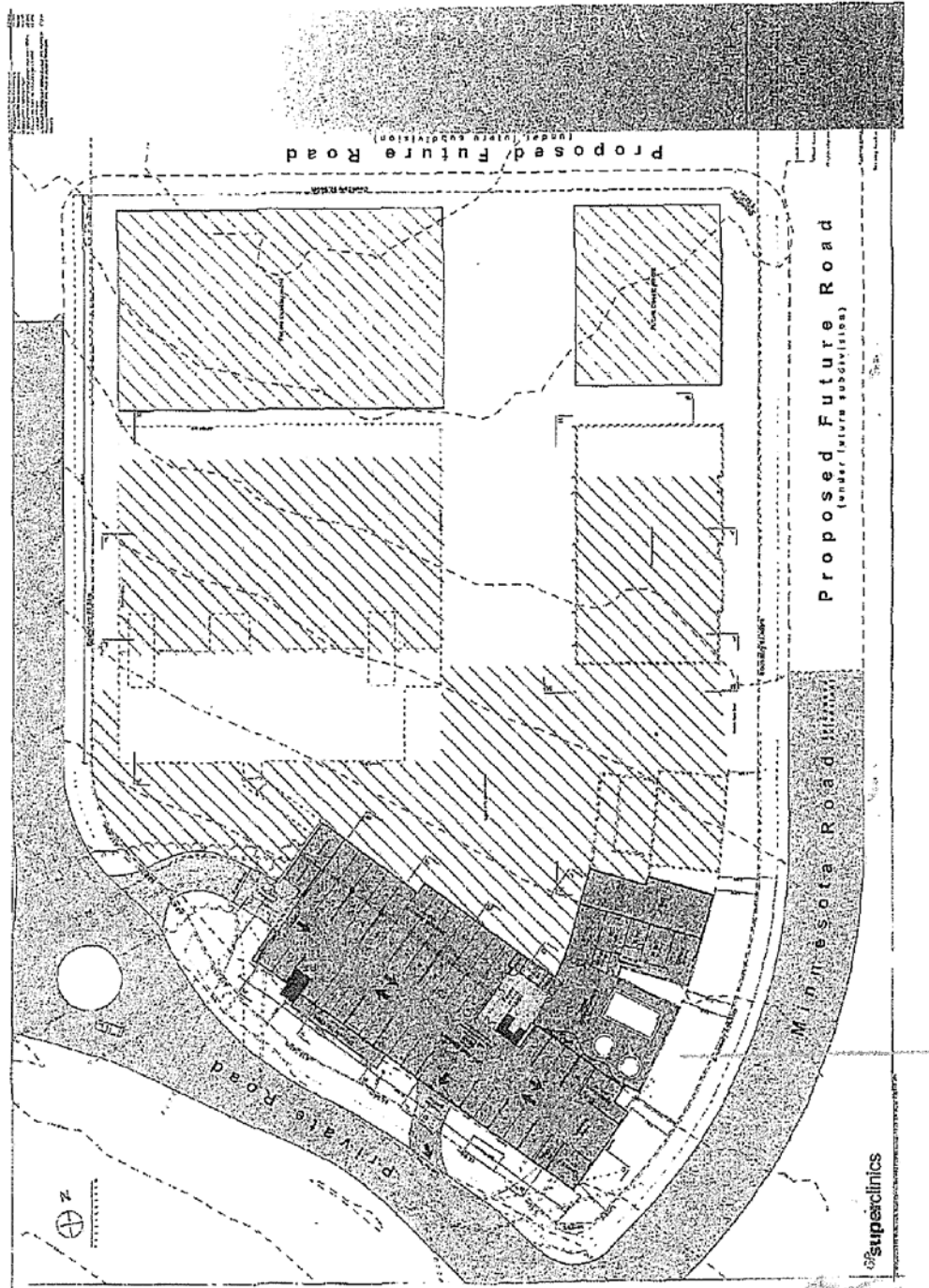
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JW
JR YRC
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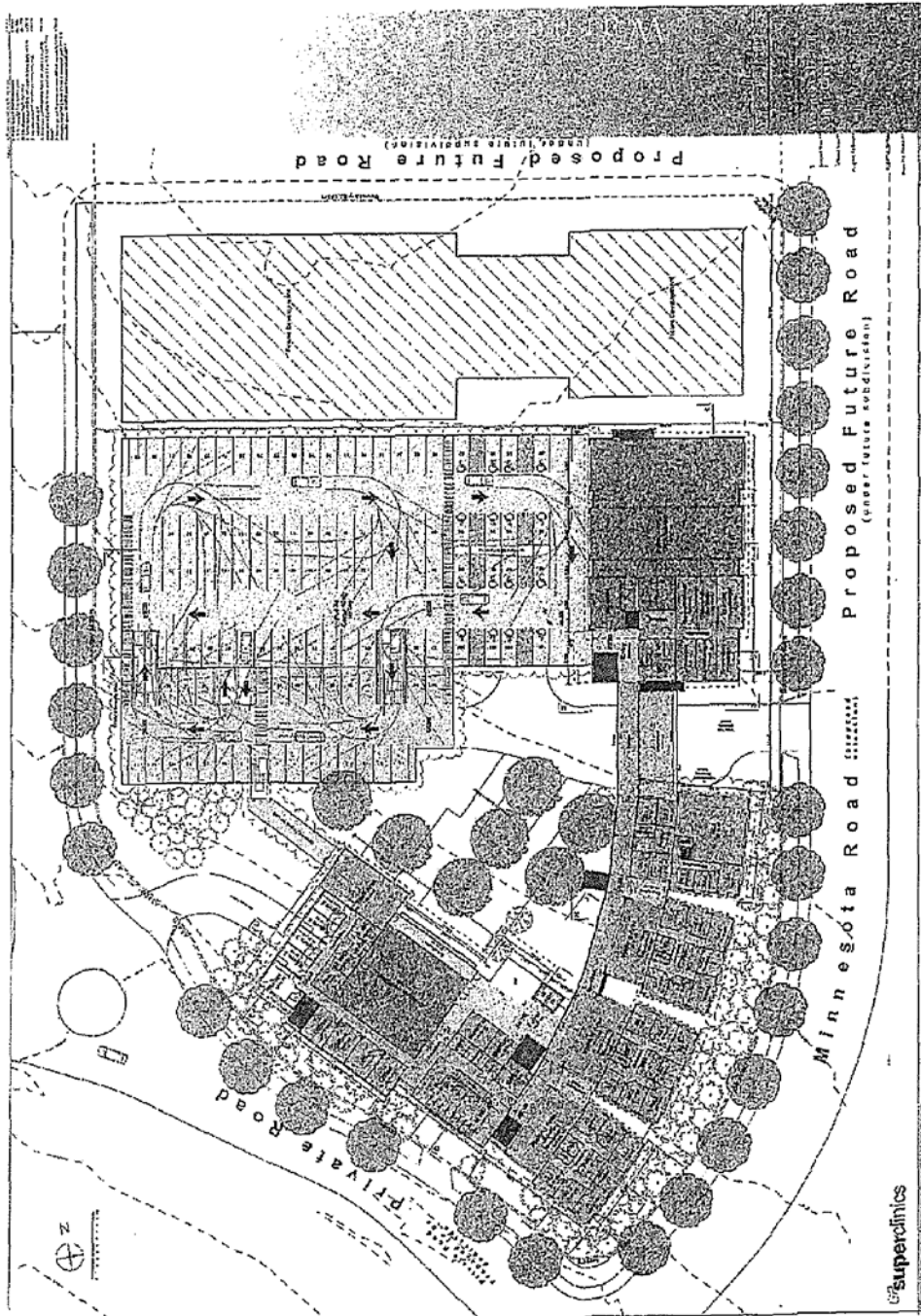
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DEED OF VARIATION OF VOLUNTARY PLANNING AGREEMENT

PARTIES

Wyong Shire Council of Council Chambers, Hely Street, Wyong in the State of New South Wales ("**Council**")

The Trustees of the Roman Catholic Church of the Diocese of Broken Bay of Building 2, 423 Pennant Hills Road, Pennant Hills in the State of New South Wales ("**the Church**")

and

Warnervale Medical Holdings Pty Limited as trustee for the **Warnervale Medical Holdings Unit Trust** of PO Box 27, Toukley in the State of New South Wales ("**the Developer**")

BACKGROUND

- A. On 24 September 2010 the Parties entered in to the Voluntary Planning Agreement ("VPA"). The VPA makes provision for the payment of contributions to Council for the development of the Developer Land and related matters. The VPA does not provide for the staged payment of contributions to Council.
- B. At the time the Parties entered in to the VPA the Church owned the Church Land. Since that time the Church Land has been subdivided in to a number of lots, one of which is the Developer Land, and the Developer has purchased the Developer Land from the Church.
- C. The original Development Consent did not provide for staged development of the Developer Land. The Modified Consent, being a modification of the Development Consent, does provide for the staged development of the Developer Land. The Developer has completed Stage 1 of the Development on the Developer Land, pursuant to the Modified Consent.
- D. The effect of this Deed is to vary the VPA so as to permit the staged payment of developer contributions consistent with the staging permitted under the Modified Consent; to acknowledge that the Developer has paid the Previous Contributions; to provide for the return to the Developer of both the Bank Guarantee and the proportion of the Previous Contributions that relate to Stage 1; to remove the Church as a party to the Current VPA; and to make consequential modifications to the VPA.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed, unless express or implied to the contrary:

Act means the *Environmental Planning and Assessment Act 1979*;

Bank Guarantee means any guarantee paid to Council by the Developer pursuant to clause. 7 of the VPA;

Church means The Trustees of the Roman Catholic Church of the Diocese of Broken Bay;

Church Land means the land previously known as Lot 8 DP 7738;

Council means Wyong Shire Council;

Deed means this document and any annexures or schedules attached to this document;

Developer means Warnervale Medical Holdings Pty Limited as trustee for the Warnervale Medical Holdings Unit Trust;

Developer Land means Lot 3 in Deposited Plan 1155796, otherwise known as 85 Sparks Road, Woongarra;

Development means the development of the Developer Land that is permitted by the Modified Consent;

Development Consent means the conditional consent to the development application DA/1396/2009, granted on or about 29 June 2010;

Development Contributions Plan means the "Warnervale Town Centre Section 94 Development Contributions Plan", or any other similarly named document, that permits Council to require the payment of Monetary Contributions for development within the Warnervale Town Centre;

LPMA means the Land and Property Management Authority, or its successors or assigns;

Modified Consent means the Development Consent, as modified pursuant to s. 96 of the Act on 16 February 2011 (modification application DA/1396/2009/A), 5 September 2011 (modification application DA/1396/C) and 9 November 2011 (modification application DA/1396/D);

Occupation Certificate has the same meaning as in the Act;

Parties mean the parties to this Deed;

Party means a party to this Deed;

Previous Contributions means the monies paid to Council under the Current VPA, being the total sum of \$698,002.69 paid to Council on 16 October 2011;

Stage 1 means that part of the Development completed prior to this Deed, being Stage 1 of the Development as set out in the Modified Consent and as evidenced by Interim Occupation Certificate dated 24th August 2012 for Construction Certificate 861/2010/B, as per plan in Annexure "A" to this Deed;

Stage 2 means those parts of the Development other than Stage 1;

VPA means Planning Agreement dated 24 September 2010 between Council, the Church and the Developer, a copy of which is Annexure "B" to this Deed;

Warnervale Town Centre means an area of land within the local government area of Wyong Shire, and bounded by Hiawatha, Hakone and Sparks Roads and east of Bruce Crescent.

- 1.2 A word or phrase which is used in this Deed and is defined in the VPA, but is not defined in this Deed, has the meaning given to it in the VPA.
- 1.3 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.1.1 The headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.1.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.1.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.

- 1.1.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.1.5 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.1.6 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.1.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.1.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.1.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.1.10 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular and a reference to any gender denotes the other genders, unless otherwise defined.
- 1.1.11 References to the word "include" or "including" are to be construed without limitation.
- 1.1.12 A reference to this Deed includes the agreement recorded in this Deed.
- 1.1.13 A reference to a party to this Deed includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- 1.1.14 The schedule to this Deed forms part of this Deed.

2. GOVENING LAW AND JURISDICTION

- 2.1 This Deed is governed by and is to be construed in accordance with the laws of New South Wales. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of New South Wales and waives any right to object to proceedings being brought in those Courts.

3. OPERATION

- 3.1 The parties agree that this Deed takes effect after the Parties have executed this Deed and on the date upon its registration in accordance with clause 7.1.

4. VARIATION

Variation

- 4.1 The Parties agree that the VPA be varied as follows with effect from the date of this Deed:
 - 4.1.1 by replacing all references in the VPA to the phrases "Owner", "Land" and "Proposed Lot 3" with "Church", "Church Land" and "Developer Land" respectively;
 - 4.1.2 In clause. 4.1 of the VPA the :
 - (a) Replace the definitions of "Bank Guarantee", "Development" and "Future Development": with the following:

Bank Guarantee means any guarantee paid to Council by the Developer pursuant to clause 7 of the unmodified version of this Agreement executed by the Parties on 24 September 2010;

Development means the development of the Developer Land that is permitted by the Modified Consent;

Future Development means any development on the developer land that is beyond the scope of the Modified Consent.

- (b) Insert the following additional definitions:

Developer Land means Lot 3 in Deposited Plan 1155796, otherwise known as 85 Sparks Road, Woongarah;

Modified Consent means the Development Consent, as modified pursuant to s. 96 of the Act on 16 February 2011 (modification application DA/1396/2009/A), 5 September 2011 (modification application DA/1396/C) and 9 November 2011 (modification application DA/1396/D);

Occupation Certificate has the same meaning as in the Act;

Previous Contributions means the monies paid to Council under the Current VPA, being the total sum of \$698,002.69 paid to Council on 16 October 2011;

Stage 1 means that part of the Development completed prior to this Agreement, being Stage 1 of the Development as set out in the Modified Consent and as evidenced by Interim Occupation Certificate dated 24th August 2012 for Construction Certificate 861/2010/B, as per plan in Attachment A to this Agreement.

Stage 2 means those parts of the Development other than Stage 1;

- (c) Delete the definitions of "Proposed Lot 3" and "Monetary Contributions".

4.1.3 Schedule 1 is deleted and replaced with the Schedule 1 of this Agreement;

4.1.4 Clause 5 is deleted and replaced with the following:

5 MONETARY CONTRIBUTIONS

5.1 The Developer and Council agree that:

- (a) The Developer paid the Previous Contributions to Council on 16 October 2011; and
- (b) As at November 2011 the indexed value of the Previous Contributions was \$719,111.64, of which \$602,415.78 related to Stage 1 and \$116,695.86 related to Stage 2; and
- (c) The Developer has met its obligation to pay developer contributions in respect to Stage 1 of the Development by the payment of the component of the Previous Contributions that the Developer and Council have agreed relate that Stage 1; and
- (d) Council will repay the sum calculated in accordance with the following formula to the Developer within 14 days of the date on which this clause becomes operative:

$$\text{Amount to be repaid} = \$116,695.64 \times \frac{\text{CPI-B}}{\text{CPI-A}}$$

where:

CPI-B is the Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the time of the repayment required by this clause 5.1(d);

CPI-A The Consumer Price Index Number (Sydney – All Groups) last published by the Australia Bureau of Statistics as at November 2012.

(e) The Developer and Council agree that the repayment that Council is required to make pursuant to cl. 5.1(d) is repayment of that part of the Previous Contributions that relates to Stage 2 of the Development.

5.2 The Developer agrees to pay to Council a monetary contribution calculated in accordance with the following in respect to Stage 2 of the Development, such payment to be paid prior to the issue of an Occupation Certificate in respect to Stage 2:

Developer contribution to be paid = \$455, 814.52 x $\frac{\text{CPI-C}}{\text{CPI-A}}$

where:

CPI-C is the Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the time of the contribution is to be paid by this clause 5.2);

CPI-A The Consumer Price Index Number (Sydney – All Groups) last published by the Australia Bureau of Statistics as at November 2012.

5.3 Council and the Developer agree that:

(a) no amendment will be made to the contributions required to be paid under this Agreement as a result of the adoption of any Development Contributions Plan; and

(b) Schedule 1 to this Agreement identifies the purposes for which the Previous Contribution and the contributions to be paid pursuant to clause. 5.2 are made.

5.4 In the event that the Modified Consent is further modified so that Stage 2 of the Development is to be completed in more than one stage then Council may give notice in writing to the Developer that permits the contributions that the Developer is required to pay to Council pursuant to cl. 5.2 to be paid by way of instalments. The Developer acknowledges that Council has an absolute discretion whether it gives any such notice and as to the content of that notice.

4.1.6 Clause 6 is deleted.

4.1.7 Clause 7 is deleted.

4.1.8 Clause 8.1 is deleted and replaced with the following

8.1 *The parties agree that:*

- (a) *Nothing in this Agreement operates to fetter, in any way, Council's ability to impose on any grant of consent for Future Development of the Developer Land a condition requiring the making of a contribution for the purpose of s. 94 and/or 94A of the Act; and:*
- (b) *Nothing in this Agreement operates to confer any credit to the Developer or any other person in respect to any Future Development of the Developer Land.*

Affirmation

- 4.2 Other than the variation to the VPA given effect by this Agreement, the Parties ratify and affirm the VPA in all other respects.

5. RETURN OF BANK GUARANTEE

Council will return the Bank Guarantee to the Developer within fourteen (14) days of the date on which this Deed becomes operative.

6. RELEASE

Release of the Church

- 6.1 The Parties acknowledge and agree that the Church has met its obligations under the VPA.
- 6.2 The Parties agree that as from the date of this Deed, Council and the Developer release and discharge the Church from all its obligations under VPA and agree:
- (a) not to make any claim or demand or commence any action or proceedings against the Church in respect of the VPA; and
 - (b) that this Deed may be pleaded in bar in any such action or proceeding.

Release of Council and Developer

- 6.3 The Church releases Council and the Developer from all claims arising under the VPA as from the date of this Agreement.

7. REGISTRATION

- 7.1 The Developer agrees to procure, at no cost to Council, the registration of this Agreement pursuant to section 93H of the Act on the relevant folios of the Register pertaining to the Land as soon as practicable following the execution of this Agreement. This obligation includes the Developer procuring, at no cost to Council, the written consent of any mortgagee or other person holding an interest in the Developer Land that is necessary to effect the registration required by this clause.

8. COSTS

- 8.1 The Developer agrees to pay all of its costs (inclusive of GST) in connection with this Agreement, including the negotiation and execution of this agreement, all legal advice and costs associated with this Agreement, and the registration of this agreement in accordance with clause 8 of this Agreement.
- 8.2 The Developer agrees to pay to Council the sum of \$5,500 (inclusive of GST) towards the negotiation, preparation, processing and execution of this agreement. This payment may be deducted by Council from any amount that Council is required to pay to the Developer pursuant to clause 5.1(d) of Current VPA, as modified by clause. 5 of this Agreement.

SCHEDULE 1

Amount and Timing of Monetary Contributions

Item	Description	Rate as at May 2010	Factor	Amount required under Current VPA (\$ as at May 2010)	Previous Contributions Paid Indexed to November 2012	Total Amount required to be paid under this Agreement Indexed to November 2012	Ratios for stage 1 payments	Stage 1 %	Payments required for Stage 1	Required to be paid prior to issue of the construction certificate for Stage 2
Integrated Water Cycle Management and Drainage										
NDA										
1	Integrated Water Cycle Management	\$ 27,899.00	1.348	\$ 36,929.45		\$39,215.44	relates to total land area	100%	\$ 39,215.44	\$ -
2	Drainage and Water Quality - Land	\$ 34,704.00	1.348	\$ 46,888.83		\$50,336.54	relates to total land area	100%	\$ 50,336.54	\$ -
3	Drainage and Water Quality - Works Studies, Valuations and Administration	\$ 58,650.00	1.348	\$ 79,060.20		\$84,873.45	relates to total land area	100%	\$ 84,873.45	\$ -
NDA										
4	Studies and Land Valuations	\$ 2,710.00	1.348	\$ 3,653.08		\$3,921.69	relates to total land area	100%	\$ 3,921.69	\$ -
5	Plan Administration	\$ 2,292.00	1.348	\$ 3,098.62		\$3,316.79	relates to total land area	100%	\$ 3,316.79	\$ -
Sub-Total										
				\$ 126,535.00	\$ 160,221.18	\$ 181,664			\$ 181,663.91	\$ -
Roadworks										
DVT's										
6	Sparks Road/Minnesota Road Intersection	\$ 47.40	2170	\$ 102,859.00		\$110,421	based on 48% of total traffic generation.	48%	\$ 53,002.12	\$ 57,418.97
7	Sparks Road/Entrance Drive Intersection	\$ 46.12	2170	\$ 101,420.40			Now being paid for by the State Govt.	0%	\$ -	\$ -
8	Link Road Stage 1	\$ 51.44	2170	\$ 111,624.80		\$118,833	based on 48% of total traffic generation	48%	\$ 57,619.60	\$ 62,312.90
9	Link Road Stage 2	\$ 138.07	2170	\$ 301,781.90		\$323,972	based on 48% of total traffic generation	48%	\$ 155,506.44	\$ 168,465.31
10	Sparks Road Pedestrian Facilities at Railway Overpass	\$ 4.68	2170	\$ 10,155.00		\$10,902	based on 48% of total traffic generation	48%	\$ 5,233.12	\$ 5,669.21
11	Maitaram/Hawatha Road Intersection	\$ 10.45	2170	\$ 22,676.50		\$24,344	based on 48% of total traffic generation	48%	\$ 11,685.07	\$ 12,658.82
12	Entrance Drive Intersection	\$ 31.35	2170	\$ 68,029.50		\$73,032	based on 48% of total traffic generation	48%	\$ 35,056.20	\$ 37,976.47
13	Pacific Highway/Chelmsford Road Intersection	\$ 15.60	2170	\$ 33,652.00		\$36,341	based on 48% of total traffic generation	48%	\$ 17,443.74	\$ 18,897.38
14	Sub-Artificial/Railway Station Intersection	\$ 42.38	2170	\$ 91,964.60		\$98,727	based on 48% of total traffic generation	48%	\$ 47,586.82	\$ 51,337.89
15	Chelmsford Road/Azuna Road Intersection	\$ 33.91	2170	\$ 73,594.70		\$78,995	based on 48% of total traffic generation	48%	\$ 37,917.76	\$ 41,077.58
16	Roadworks and Traffic Management - Future Development	\$ TBA	TBA			\$0				
Sub-Total				\$ 320,348.00	\$ 320,348.00	\$ 320,348.00			\$ 159,622.69	\$ 176,725.31
TOTAL				\$ 1,006,165.18	\$ 1,006,165.18	\$ 1,006,165.18			\$ 602,415.76	\$ 655,814.52
Proposed Refund										
Costs as per Clause 17 of this Agreement						\$ 5,600.00			\$ 5,600.00	\$ -
Refund, less costs above						\$ 111,182.55			\$ 111,182.55	\$ -

EXECUTED as a DEED

Date:

Executed for and on behalf of Wyong Shire Council:

Signature of General Manager

Signature of Witness

Michael Whittaker

Name

Executed for and on behalf of Warnervale Medical Holdings Pty Limited as trustee of the Warnervale Medical Holdings Unit Trust in accordance with section 127(1) of the Corporations Act:



Melanie Cranney
Sole Director

The common seal of **The Trustees**)
of the **Roman Catholic Church for**)
the **Diocese of Broken Bay**)
ABN: 79 031 652 544 was hereunto)
affixed in pursuance of a resolution)
passed at a meeting of the said Body)
Corporate in the presence of the Bishop)
and two other members thereof all of)
whose signatures are set opposite hereto:)

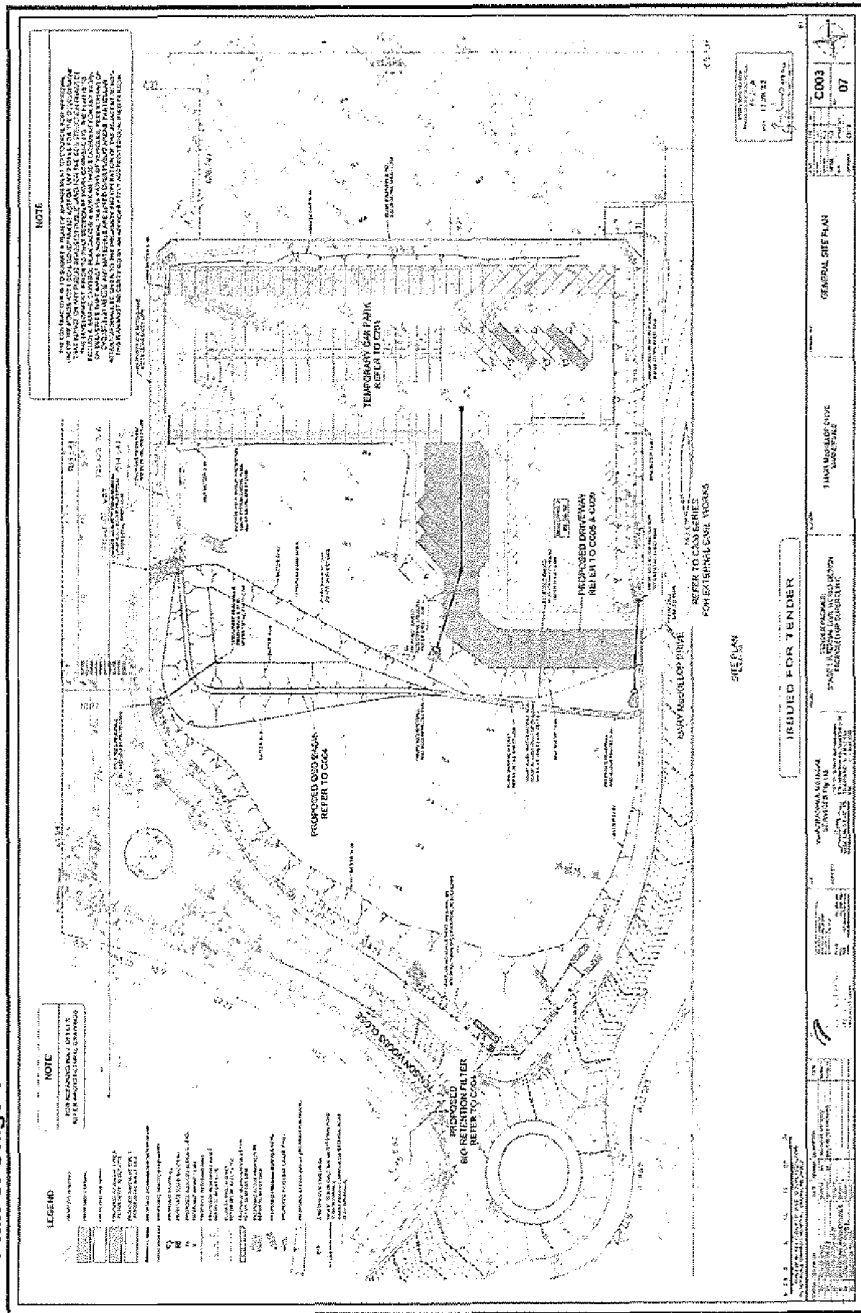
.....
Bishop

.....
Member

.....
Member

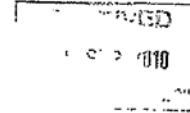
ANNEXURE A

Plan of Stage 1



ANNEXURE B

Council Reference LDOC009115



VOLUNTARY PLANNING AGREEMENT

Wyong Shire Council (ABN 47 054 613 735)

And

The Trustees of the Roman Catholic Church of th Diocese of Broken Bay
(ABN 79 031 652 544)

And

Warnervale Medical Holdings Pty Limited (ACN 140069889) as trustee for
Warnervale Medical Holdings Unit Trust (ABN 92 338 068 421)

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PLANNING AGREEMENT

DATE 19.2.10

PARTIES

Wyong Shire Council of Council Chambers, Hely Street, Wyong in the State of New South Wales ("Council")

and

The Trustees of the Roman Catholic Church of the Diocese of Broken Bay of Building 2, 423 Pennant Hills Road, Pennant Hills in the State of New South Wales ("the Owner")

and

Warnervale Medical Holdings Pty Limited as trustee for the Warnervale Medical Holdings Unit Trust of PO Box 27, Toukley in the State of New South Wales ("the Developer")

BACKGROUND

- a. The Owner has lodged a development application with Council for the subdivision of the Land. If consent is granted by Council to that application, the Owner intends selling Proposed Lot 3 of that subdivision to the Developer.
- b. The Developer has lodged the Development Application with Council to develop Proposed Lot 3 for a health services facility (General Practitioner super clinic) and associated facilities, including carparking and strata subdivision.
- c. The Developer acknowledges that the Development generates the need to upgrade existing and/or provide new local community infrastructure.
- d. The Warnervale Town Centre Development Contributions Plan has not been adopted and the Developer has offered to enter into this Agreement to pay Council Monetary Contributions towards various categories of local community infrastructure.
- e. The Developer intends to carry out the Future Development of the Land, subject to Council approval.

OPERATIVE PROVISIONS**1 PLANNING AGREEMENT UNDER THE ACT**

- 1.1 The parties agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2 APPLICATION OF THIS AGREEMENT

- 2.1 This Agreement applies to the Land.

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3 OPERATION OF THIS AGREEMENT

3.1 Subject to clause 3.2, this Agreement takes effect once executed by all parties.

3.2 Clauses 5 and 6 of this Agreement will only operate if and when:

- (a) the subdivision of the Land has been approved;
- (b) the purchase of proposed Lot 3 by the Developer has been completed, or the Developer has been granted exclusive possession of Proposed Lot 3; and
- (c) the Development Consent is granted.

3.3 This Agreement identifies the arrangements with regards to the payment of Monetary Contributions towards off-site community infrastructure.

4 DEFINITIONS AND INTERPRETATION

4.1 In this Agreement the following definitions apply:

Act means the Environmental Planning and Assessment Act 1979 (NSW);

Authority means Council, the NSW Department of Environment, Climate Change and Water (DECCW), the NSW Department of Planning (DoP), the NSW Roads and Traffic Authority (RTA) and any heirs and successors of those organisations;

Bank Guarantee means an unconditional and irrevocable undertaking issued by a major Australian bank in favour of Council in a form acceptable to Council (acting reasonably) to pay on demand the amount specified in the guarantee;

Concept Plan/s means the plan/s at Annexure A to this Agreement;

Council means Wyong Shire Council or its representatives or assigns;

Deal, Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or disencumbering or otherwise dealing with the Land;

Developer means Warnervale Medical Holdings Pty Limited as trustee for the Warnervale Medical Holdings Unit Trust or its representatives or assigns;

Development means the development of the Land as shown on the Concept Plan/s and the Development Application;

Development Application means the Development shown in development application No. 1396/2009 lodged with Council;

Development Consent means any consent issued by or on behalf of Council in relation to Development Application 1396/2009;

Development Contributions Plan means the Warnervale Town Centre Section 94 Development Contributions Plan, or any other similarly named document, that permits Council to require the payment of Monetary Contributions for development within the Warnervale Town Centre;

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Future Development means the development of those portions of the Concept Plan/s which are hatched and entitled "Future Development" within Proposed Lot 3. The future development of Proposed Lot 3 is understood to involve a private hospital which will generate additional traffic and therefore a need to contribute to surrounding road and intersection upgrades;

Land means Lot 8 DP 7738 – otherwise known as 85 Sparks Road, Woongarra;

LPMA means the Land and Property Management Authority, or its successors or assigns;

Minister means the Minister administering the Act, from time to time;

Monetary Contributions means the monetary contributions specified at clause 5 and in Schedule 1 of this Agreement;

Owner means the Trustees of the Roman Catholic Church of the Diocese of Broken Bay or its representatives or assigns;

Parties mean the Council, the Owner and the Developer, including their successors and assigns;

Party means a party to this Agreement including its successors and assigns;

Proposed Lot 3 means the portion of the Land identified Part 3 in the Concept Plan/s;

Regulation means the Environmental Planning and Assessment Regulation 2000;

Roads mean those roadwork and intersection upgrade projects identified as Items 6-15 in the table in Schedule 1.

Warnervale Town Centre means an area of land within the local government area of Wyong Shire, and bounded by Hiawatha, Hakone and Sparks Roads and east of Bruce Crescent.

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) The headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

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- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular and a reference to any gender denotes the other genders, unless otherwise defined.
- (k) References to the word "include" or "including" are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) The schedule to this Agreement forms part of this Agreement.

5 PAYMENT OF THE MONETARY CONTRIBUTIONS

- 5.1 The Developer agrees to pay the Monetary Contributions to Council in the amounts specified (including any indexation costs calculated in accordance with clause 6), and by the times specified in Schedule 1 of this Agreement.
- 5.2 Where a Development Contributions Plan has been adopted by Council for the Warnervale Town Centre, and no payment to Council of any of the Monetary Contributions has been made, the amount of Monetary Contributions payable under this Agreement will only be in accordance with the amounts specified at Schedule 1 of this Agreement where the total contributions as calculated by Council as payable under the Warnervale Town Centre Contributions Plan are greater than those required in total under Schedule 1.
- 5.3 In circumstances where clause 5.2 applies, and the total contributions as calculated by Council as payable under the Development Contributions Plan are less than the total Monetary Contributions payable pursuant to Schedule 1, then the Developer can choose to pay the contributions under the Development Contributions Plan in lieu of the Monetary Contribution amounts specified in Schedule 1, as applicable. Nonetheless, the times specified for payment of Monetary Contribution amounts under Schedule 1 remain as specified in that Schedule.
- 5.4 For the avoidance of doubt, where Monetary Contributions have been paid under this Agreement, and the Development Contributions Plan has not been adopted at the time of payment, the Developer agrees that those Monetary Contributions paid will not be revised or refunded, and all Monetary Contributions as required by the terms of Schedule 1 to this Agreement are to be paid, even if the Development Contributions Plan at a later point in time allows or permits lesser contributions.
- 5.5 The Parties agree that Monetary Contributions for Roads for any Future Development will be calculated, levied and paid in accordance with the following formula and at the times specified in Schedule 1:

$$R \times \text{DVTs}$$

Where:

R Rate per DVT of \$424.40 (indexed in accordance with clause 6)

DVTs Number of daily vehicles trips generated by the Future Development, as determined by Council in consultation with the Developer.

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6 INDEXATION OF AMOUNTS PAYABLE BY THE PARTIES

- 6.1 The Monetary Contributions payable under this Agreement (including all upper limit amounts) are to be indexed from the date of execution of this Agreement in accordance with the following formula:

$$C \times \frac{\text{CPI 2}}{\text{CPI 1}}$$

Where:

C	The original value of the Monetary Contribution identified in this Agreement
CPI 2	The Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the time of payment
CPI 1	The Consumer Price Index Number (Sydney – All Groups) last published by the Australia Bureau of Statistics at the date of execution of the Planning Agreement

7 SECURITY

- 7.1 The Developer will lodge with Council a Bank Guarantee to the value of \$60,000.00 within 10 business days after execution of this Agreement.
- 7.2 If any of the Monetary Contributions are not paid in full by the times specified in Schedule 1, Council may call upon the Bank Guarantee without reference to the Developer, and apply that money as a payment or part payment of the outstanding Monetary Contributions, but without prejudice to any other rights Council has (under this Agreement or otherwise) to pursue outstanding Monetary Contributions
- 7.3 Council agrees to discharge the Bank Guarantee when the Monetary Contributions have been paid in full for Items 1-15.

8 APPLICATION OF SECTION 94 & 94A OF THE ACT TO THE DEVELOPMENT

- 8.1 The Parties agree that Council is excluded from applying a condition of consent of the nature referred to in section 94 or 94A(1) of the Act in relation to Future Development of Proposed Lot 3, except as provided for in clause 5.5 of this agreement.
- 8.2 The Parties agree that Council retains the right to levy water and sewer charges against the Development and Future Development of Proposed Lot 3 pursuant to Section 306 of the Water Management Act 2000.

9 REGISTRATION OF THIS AGREEMENT

- 9.1 The Owner and Developer agree to procure the registration of this Agreement pursuant to section 93H of the Act on the relevant folios of the Register pertaining to the Land as soon as practicable following execution of this Agreement and obtain the written consent of any mortgagee or other person with an interest in the Land to such registration.

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To that end the Owner and Developer agree to deliver to the Council within 7 working days of the date of execution of this agreement, all necessary documents in registrable form to enable Council to lodge those documents at LPMA and obtain immediate registration of this agreement on the title to the Land.

- 9.2 Council agrees that once the plan of subdivision creating Proposed Lot 3 has been registered, it will consent to have this Agreement removed from the remainder of the Land, such that this Agreement will only apply to the newly created Lot 3.

10 DEVELOPER & OWNER WARRANTIES AND INDEMNITIES

- 10.1 The Developer warrants to Council that:

- (a) It intends to purchase Proposed Lot 3 from the Owner;
- (b) It is able to fully comply with its obligations under this Agreement;
- (c) It has full capacity to enter into this Agreement; and
- (d) There is no legal impediment to it entering into this Agreement, or performing its obligations under it.

- 10.2 The Developer guarantees to Council the due and punctual payment of all moneys due and payable or from time to time due and payable to Council by the Developer pursuant to or in connection with this Agreement.

- 10.3 The Developer agrees that Council is not required to proceed against the Developer or exhaust any remedies it may have in relation to the Developer or enforce any security it may hold with respect to the Developer's obligations, but is entitled to demand and receive payment when any payment is due under this Agreement.

- 10.4 The Owner warrants that it will promptly register with LPMA the relevant plans of subdivision following the grant of any development consent so as to enable it to sell Proposed Lot 3 to the Developer.

11 REVIEW OF THIS AGREEMENT

- 11.1 Any amendments, variation or modification to or of, or consent to any departure by any party from the terms of this Agreement shall have no force or effect unless effected by a document executed by the parties which complies with the requirements of Section 93G of the Act.

- 11.2 Each of the Parties individually reserves the right to review this Agreement if and when there is a grant of approval for a modification to the Development Consent.

12 DISPUTE RESOLUTION

- 12.1 If a dispute arises out of or relates to this Agreement (including any dispute as to the meaning, performance, validity, subject matter, breach or termination of this Agreement or as to any claim in tort, in equity or pursuant to any statute) (**Dispute**), any court or arbitration proceedings shall not be commenced by or against Council, the Developer or their successors or assigns, relating to the Dispute unless the parties to the Dispute (**Parties**) have complied with this clause, except where a party seeks urgent interlocutory relief.

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- 12.2 A party claiming that a Dispute has arisen under or in relation to this Agreement is to give written notice to the other parties to the Dispute, specifying the nature of the Dispute.
- (i) The Parties agree to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and to take action to have the Dispute mediated within 7 working days of the receipt of written notice of the Dispute.
 - (ii) The Parties agree that the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.
 - (iii) The Parties to the mediation will be jointly responsible for the fees of the mediation and each party shall bear its own costs.
 - (iv) The Parties may, but are not required, to enter into a written agreement before mediating a Dispute.
 - (v) If any procedural aspects are not specified sufficiently in the rules under clause 12.1, the Parties agree to conduct the mediation regarding those aspects in accordance with the determination of the mediator whose decision regarding those aspects is final and binding on the Parties.
 - (vi) A legal representative acting for either of the Parties may participate in the mediation.
- 12.3 From the time when a notice of Dispute is served, neither party shall take action to terminate this Agreement, until after the conclusion of the mediation.
- 12.4 Should mediation fail to resolve any dispute then the dispute shall be determined by arbitration pursuant to the Commercial Arbitration Act 1984 and the General Manager of the Council shall request the President for the time being of The Law Society of New South Wales to appoint an arbitrator to carry out such arbitration in accordance with the provisions of such Act.
- 12.5 Despite clauses 12.1, 12.2, 12.3 and 12.4, either Council or one or more of the Developers may institute court proceedings to seek urgent equitable relief in relation to a dispute or difference arising out of or in connection with this Agreement.

13 NOTICES

- 13.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below
- (b) Faxed or emailed to that Party at the relevant details set out below

- (i) Council: Wyong Shire Council
Attention: Senior Contributions Officer
Address: DX 7306 WYONG
Fax No: (02) 4350 2098
Email: wesley.wilson@wyong.nsw.gov.au

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(ii) Owner: The Trustees of the Roman Catholic Church of the Diocese of Broken Bay
 Attention: Karl Henry, Property Manager
 Address: PO Box 340, Pennant Hills, NSW, 1715
 Fax No: (02) 9847 0501

(iii) Developer: Warnervale Medical Holdings Pty Limited
 Attention: Denise Barrett or Peter Buckingham-Jones
 Address: PO Box 27, Toukley, NSW, 2263
 Fax No: (02) 4397 2544
 Email: denise.barrett@toukleydoctors.com.au or
peter.buckinghamjones@toukleydoctors.com.au

13.2 If a party gives the other party 3 working days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.

13.3 Any notice, consent, information, application or request is to be treated or given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, 2 working days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

13.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if it is on a business day, after 5.00pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

14 APPROVALS AND CONSENT

14.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, Council may give or withhold an approval or consent to be given under this Agreement in Council's absolute discretion and subject to any conditions determined by the Council. Council is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

15 ASSIGNMENT AND DEALINGS

15.1 The Developer and Owner agree with Council that they will not Deal, transfer or mortgage their interest in the Land prior to the registration of this Agreement as a Planning Agreement upon the title of the Land as contemplated in clause 9 of this Agreement.

15.2 Notwithstanding this clause, Council will not unreasonably withhold its consent to any transfer or mortgage provided that the proposed transferee or mortgagee consents on terms acceptable to Council to permit and facilitate registration of this Agreement at LPMA in the manner contemplated in clause 9.

15.3 The Developer and Owner agree that they will not lodge any caveat or other instrument upon the title of the Land which will prohibit or hinder registration of this Agreement at LPMA in the manner contemplated in clause 9 of this Agreement.

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16 COSTS

16.1 The Developer agrees to pay or reimburse the costs of Council in connection with the:

- (a) Negotiation, preparation and execution of this planning agreement, to a *maximum* of \$5,000.00;
- (b) Advertising and exhibiting this planning agreement in accordance with the Act, to a maximum of \$215.00, and
- (c) Registration of this planning agreement,

within 7 working days after receipt of a tax invoice from Council.

17 ENTIRE AGREEMENT

17.1 This Agreement contains everything to which the parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party before this Agreement was executed, except as permitted by law.

18 FURTHER ACTS

18.1 Each Party agrees to promptly execute all documents and do all such things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

19 GOVERNING LAW AND JURISDICTION

19.1 This Agreement is governed by the law of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of its Courts and Courts of appeal from them. The parties will not object to the exercise of jurisdiction by those Courts on any basis provided that the dispute resolution provisions in clause 12 of this Agreement have first been satisfied.

20 JOINT AND INDIVIDUAL LIABILITY AND BENEFITS

20.1 Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

21 NO FETTER

21.1 Nothing in this Agreement is to be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

22 SEVERABILITY

22.1 If a clause or part of a clause in this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of the Agreement is not affected.

23 WAIVER

23.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.



Handwritten signatures and initials: DRW, BR, VRC

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SCHEDULE 1**Amount and Timing of Monetary Contributions**

Item	Description	Rate*	Factor	Amount*	Timing
Integrated Water Cycle Management and Drainage					
1	Integrated Water Cycle Management	\$27,099	1.348ha	\$36,529.45	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
2	Drainage and Water Quality – Land	\$34,784	1.348ha	\$46,888.83	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
3	Drainage and Water Quality – Works	\$58,650	1.348ha	\$79,060.20	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
Studies, Valuations and Administration					
4	Studies and Land Valuations	\$2,710	1.348ha	\$3,653.08	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
5	Plan Administration	\$2,292	1.348ha	\$3,089.62	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
Sub-Total		\$125,535	1.348ha	\$169,221	
Roadworks and Traffic Management					
6	Sparks Road/Minnesota Road Intersection	\$47.40	2,170 DVTs	\$102,858	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
7	Sparks Road/Entrance Drive Intersection	\$48.12	2,170 DVTs	\$104,420	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
8	Link Road Stage 1	\$51.44	2,170 DVTs	\$111,625	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
9	Link Road Stage 2	\$139.07	2,170 DVTs	\$301,782	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent

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10	Sparks Road Pedestrian Facilities at Railway Overpass	\$4.68	2,170 DVTs	\$10,156	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
11	Mataram/Hiawatha Road Intersection	\$10.45	2,170 DVTs	\$22,677	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
12	Entrance Drive Intersection	\$31.35	2,170 DVTs	\$68,030	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
13	Pacific Highway/Chelmsford Road Intersection	\$15.60	2,170 DVTs	\$33,852	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
14	Sub-Arterial/Railway Station Intersection	\$42.38	2,170 DVTs	\$91,965	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
15	Chelmsford Road/Arizona Road Intersection	\$33.91	2,170 DVTs	\$73,585	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
16	Roadworks and Traffic Management – Future Development	\$TBA	TBA	\$TBA	Prior to the issue of the first Construction Certificate for the Future Development, as authorised by a consent
Sub-Total		\$424,40		\$920,950	
TOTAL				\$1,090,171	

*As at May 2010 – to be indexed at time of payment in accordance with formula in clause 6

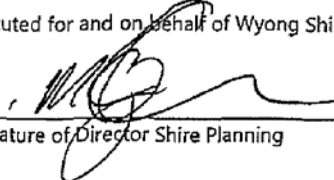
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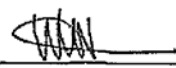
EXECUTED as an agreement

Date: 24.09.2010

Executed for and on behalf of Wyong Shire Council:


Signature of Director Shire Planning

Gina Vereker


Signature of Witness

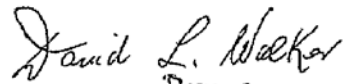

WESLEY WILSON
Name

Executed for and on behalf of The Trustees of Roman Catholic Church of the Diocese of Broken Bay in accordance with section 127(1) of the Corporations Act:



Director/Secretary (if not Sole Director)

Name [BLOCK LETTERS]

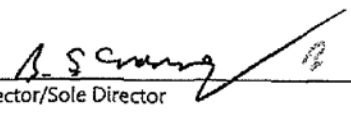

BISHOP DAVID L. WALKER

Director/Sole Director

VINCENT R. CASEY JACK ROBSON
Name [BLOCK LETTERS]

Executed for and on behalf of Warnervale Medical Holdings Pty Limited as trustee of the Warnervale Medical Holdings Unit Trust in accordance with section 127(1) of the Corporations Act:

Director/Secretary (if not Sole Director)

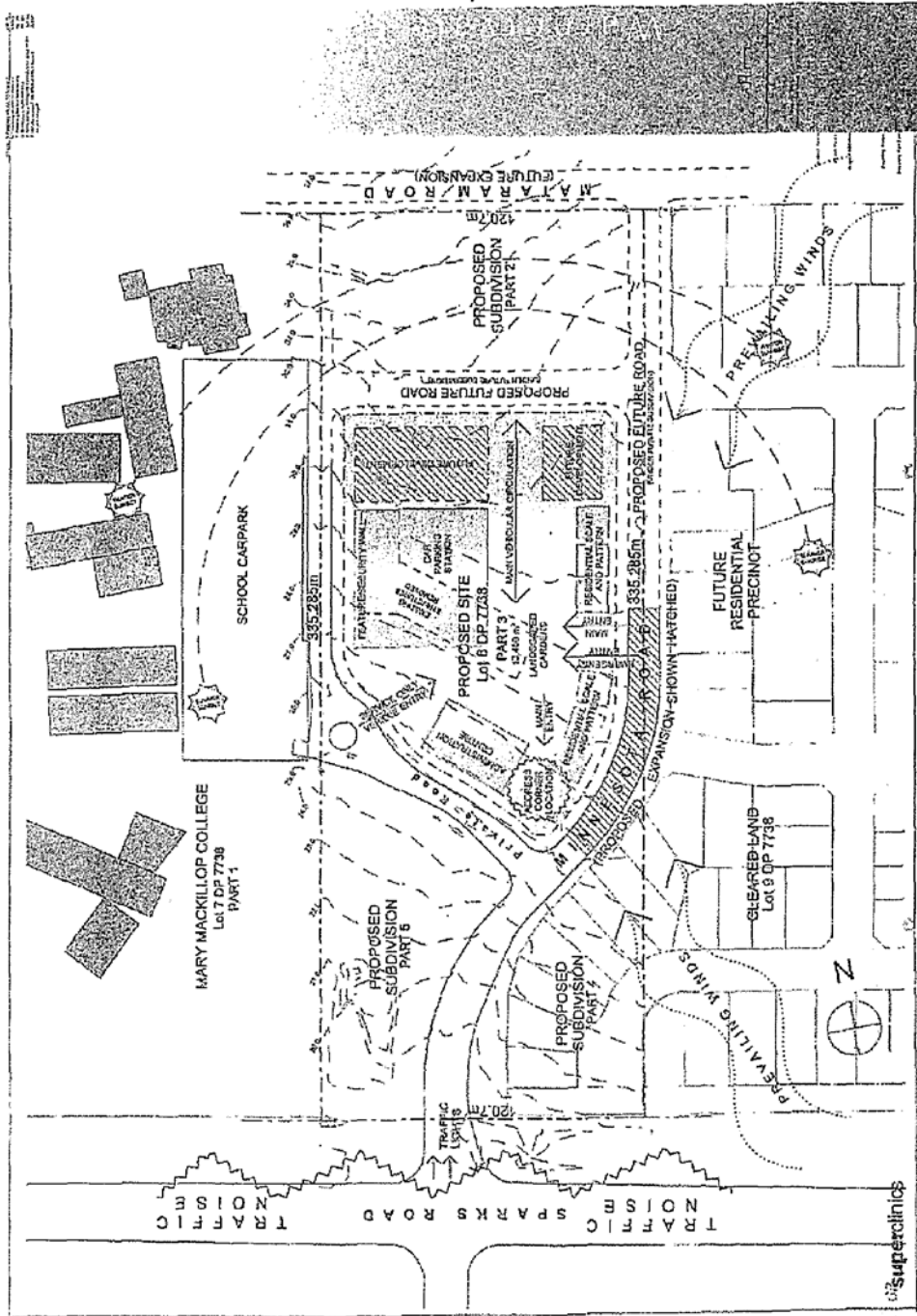
Name [BLOCK LETTERS]


Director/Sole Director

BRADLEY STEPHEN CRANNY
Name [BLOCK LETTERS]

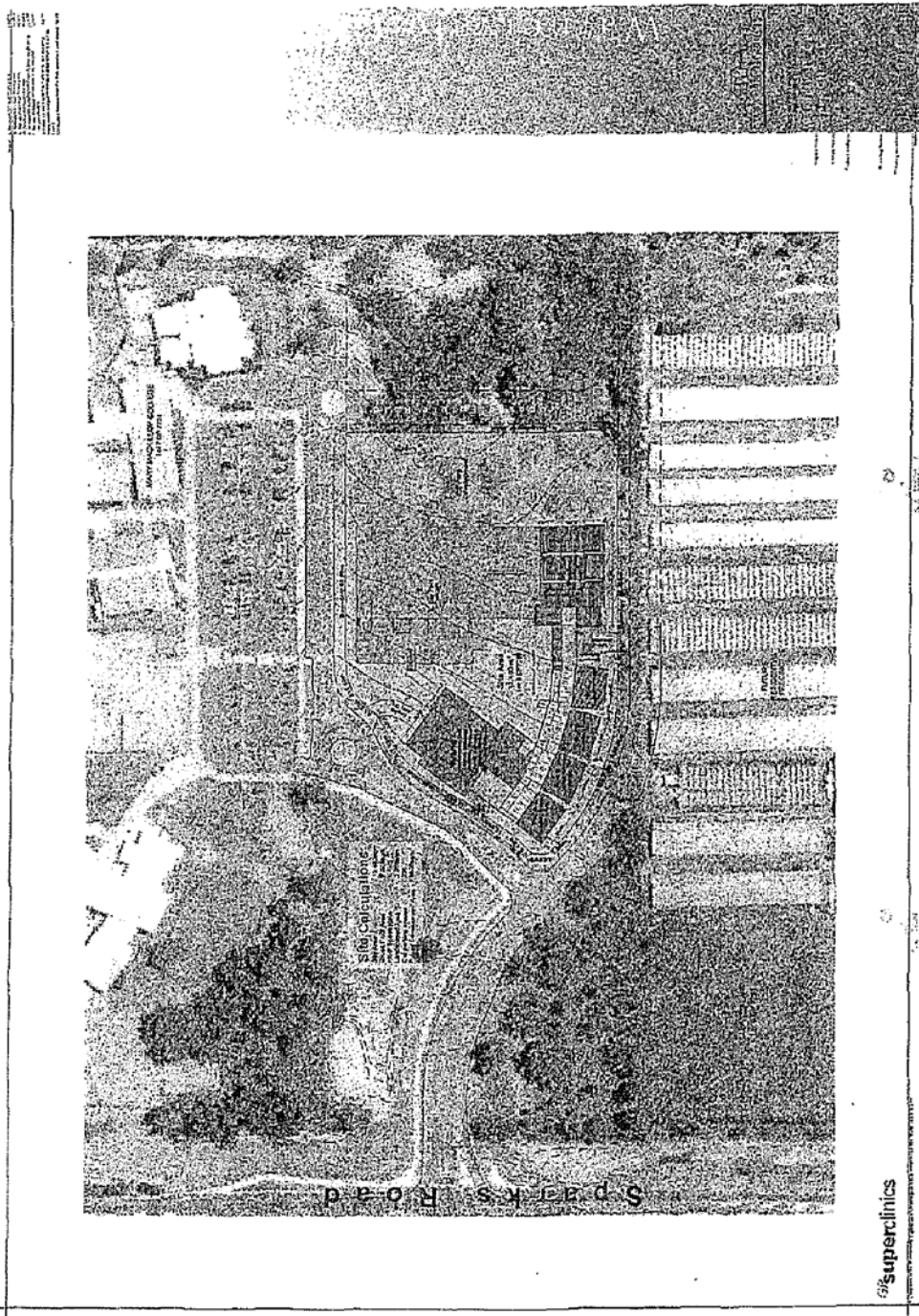
ANNEXURE A

Concept Plan/s



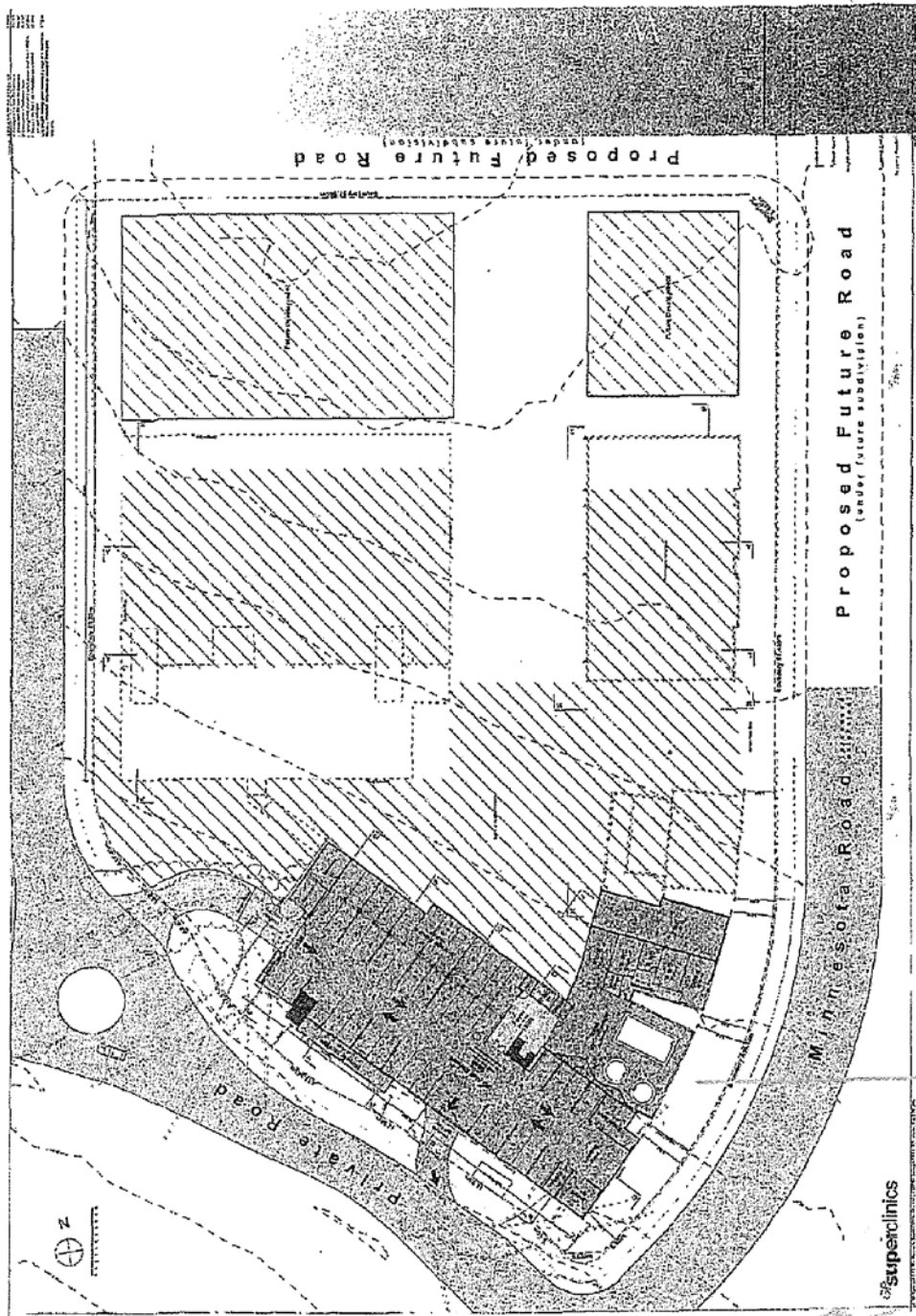
Final v1 16 June 2010

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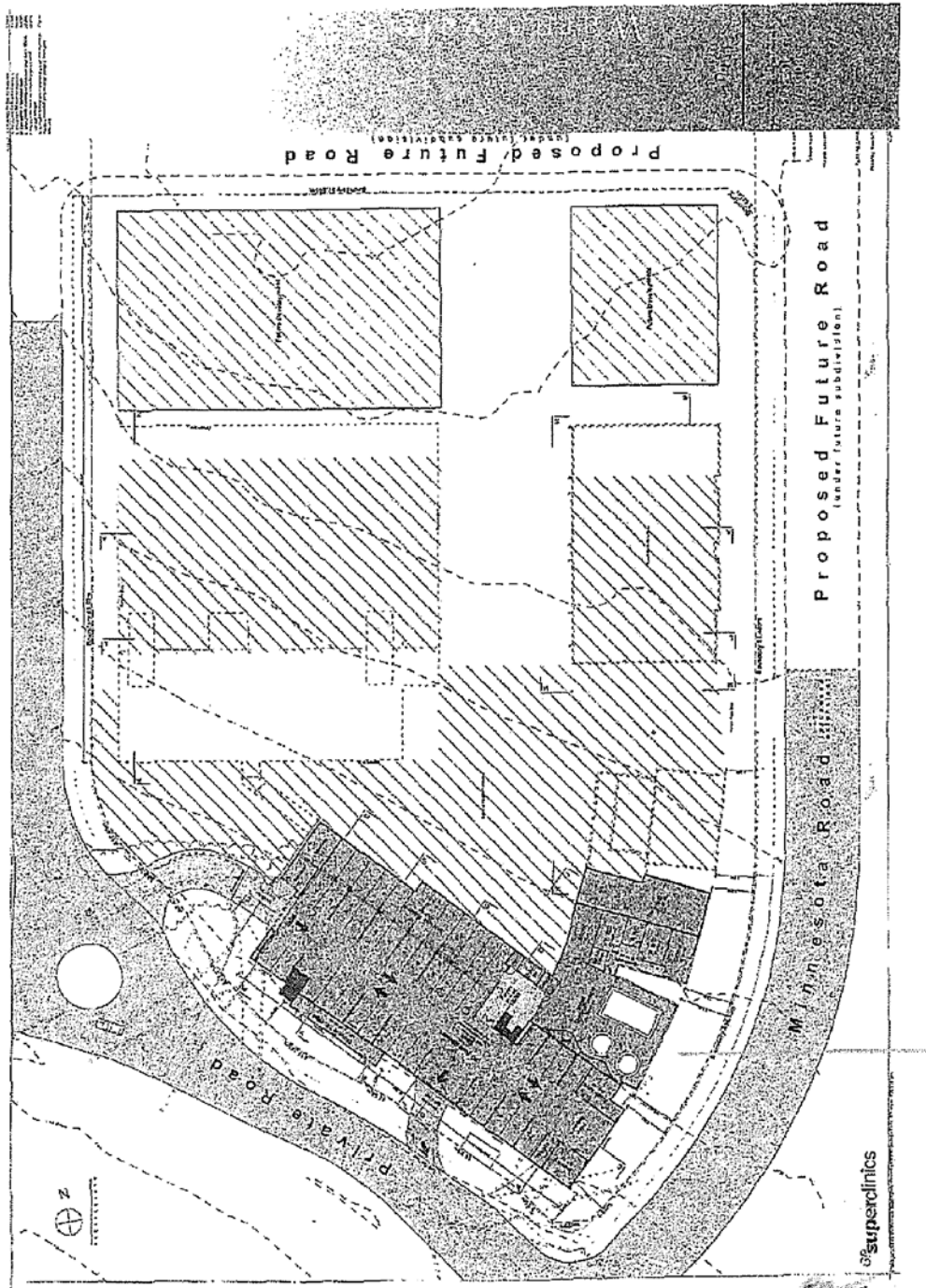
Final v1 16 June 2010

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JR YRC
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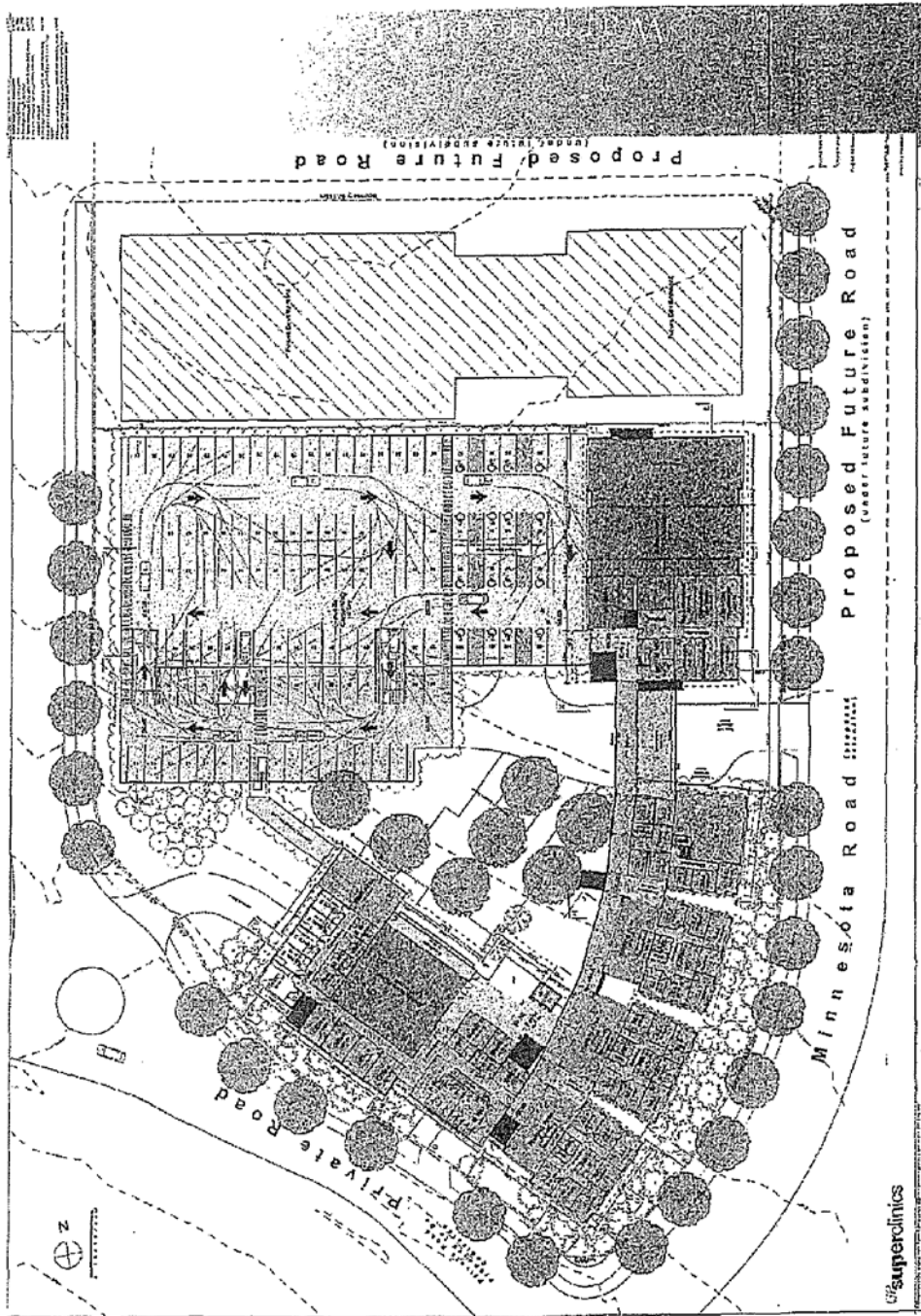
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DEED OF VARIATION OF VOLUNTARY PLANNING AGREEMENT

PARTIES

Wyong Shire Council of Council Chambers, Hely Street, Wyong in the State of New South Wales ("**Council**")

The Trustees of the Roman Catholic Church of the Diocese of Broken Bay of Building 2, 423 Pennant Hills Road, Pennant Hills in the State of New South Wales ("**the Church**")

and

Warnervale Medical Holdings Pty Limited as trustee for the **Warnervale Medical Holdings Unit Trust** of PO Box 27, Toukley in the State of New South Wales ("**the Developer**")

BACKGROUND

- A. On 24 September 2010 the Parties entered in to the Voluntary Planning Agreement ("VPA"). The VPA makes provision for the payment of contributions to Council for the development of the Developer Land and related matters. The VPA does not provide for the staged payment of contributions to Council.
- B. At the time the Parties entered in to the VPA the Church owned the Church Land. Since that time the Church Land has been subdivided in to a number of lots, one of which is the Developer Land, and the Developer has purchased the Developer Land from the Church.
- C. The original Development Consent did not provide for staged development of the Developer Land. The Modified Consent, being a modification of the Development Consent, does provide for the staged development of the Developer Land. The Developer has completed Stage 1 of the Development on the Developer Land, pursuant to the Modified Consent.
- D. The effect of this Deed is to vary the VPA so as to permit the staged payment of developer contributions consistent with the staging permitted under the Modified Consent; to acknowledge that the Developer has paid the Previous Contributions; to provide for the return to the Developer of both the Bank Guarantee and the proportion of the Previous Contributions that relate to Stage 1; to remove the Church as a party to the Current VPA; and to make consequential modifications to the VPA.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed, unless express or implied to the contrary:

Act means the *Environmental Planning and Assessment Act 1979*;

Bank Guarantee means any guarantee paid to Council by the Developer pursuant to clause. 7 of the VPA;

Church means The Trustees of the Roman Catholic Church of the Diocese of Broken Bay;

Church Land means the land previously known as Lot 8 DP 7738;

Council means Wyong Shire Council;

Deed means this document and any annexures or schedules attached to this document;

Developer means Warnervale Medical Holdings Pty Limited as trustee for the Warnervale Medical Holdings Unit Trust;

Developer Land means Lot 3 in Deposited Plan 1155796, otherwise known as 85 Sparks Road, Woongarra;

Development means the development of the Developer Land that is permitted by the Modified Consent;

Development Consent means the conditional consent to the development application DA/1396/2009, granted on or about 29 June 2010;

Development Contributions Plan means the "Warnervale Town Centre Section 94 Development Contributions Plan", or any other similarly named document, that permits Council to require the payment of Monetary Contributions for development within the Warnervale Town Centre;

LPMA means the Land and Property Management Authority, or its successors or assigns;

Modified Consent means the Development Consent, as modified pursuant to s. 96 of the Act on 16 February 2011 (modification application DA/1396/2009/A), 5 September 2011 (modification application DA/1396/C) and 9 November 2011 (modification application DA/1396/D);

Occupation Certificate has the same meaning as in the Act;

Parties mean the parties to this Deed;

Party means a party to this Deed;

Previous Contributions means the monies paid to Council under the Current VPA, being the total sum of \$698,002.69 paid to Council on 16 October 2011;

Stage 1 means that part of the Development completed prior to this Deed, being Stage 1 of the Development as set out in the Modified Consent and as evidenced by Interim Occupation Certificate dated 24th August 2012 for Construction Certificate 861/2010/B, as per plan in Annexure "A" to this Deed;

Stage 2 means those parts of the Development other than Stage 1;

VPA means Planning Agreement dated 24 September 2010 between Council, the Church and the Developer, a copy of which is Annexure "B" to this Deed;

Warnervale Town Centre means an area of land within the local government area of Wyong Shire, and bounded by Hiawatha, Hakone and Sparks Roads and east of Bruce Crescent.

- 1.2 A word or phrase which is used in this Deed and is defined in the VPA, but is not defined in this Deed, has the meaning given to it in the VPA.
- 1.3 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.1.1 The headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.1.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.1.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.

- 1.1.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.1.5 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.1.6 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.1.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.1.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.1.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.1.10 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular and a reference to any gender denotes the other genders, unless otherwise defined.
- 1.1.11 References to the word "include" or "including" are to be construed without limitation.
- 1.1.12 A reference to this Deed includes the agreement recorded in this Deed.
- 1.1.13 A reference to a party to this Deed includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- 1.1.14 The schedule to this Deed forms part of this Deed.

2. GOVENING LAW AND JURISDICTION

- 2.1 This Deed is governed by and is to be construed in accordance with the laws of New South Wales. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of New South Wales and waives any right to object to proceedings being brought in those Courts.

3. OPERATION

- 3.1 The parties agree that this Deed takes effect after the Parties have executed this Deed and on the date upon its registration in accordance with clause 7.1.

4. VARIATION

Variation

- 4.1 The Parties agree that the VPA be varied as follows with effect from the date of this Deed:
 - 4.1.1 by replacing all references in the VPA to the phrases "Owner", "Land" and "Proposed Lot 3" with "Church", "Church Land" and "Developer Land" respectively;
 - 4.1.2 In clause. 4.1 of the VPA the :
 - (a) Replace the definitions of "Bank Guarantee", "Development" and "Future Development": with the following:

Bank Guarantee means any guarantee paid to Council by the Developer pursuant to clause 7 of the unmodified version of this Agreement executed by the Parties on 24 September 2010;

Development means the development of the Developer Land that is permitted by the Modified Consent;

Future Development means any development on the developer land that is beyond the scope of the Modified Consent.

- (b) Insert the following additional definitions:

Developer Land means Lot 3 in Deposited Plan 1155796, otherwise known as 85 Sparks Road, Woongarah;

Modified Consent means the Development Consent, as modified pursuant to s. 96 of the Act on 16 February 2011 (modification application DA/1396/2009/A), 5 September 2011 (modification application DA/1396/C) and 9 November 2011 (modification application DA/1396/D);

Occupation Certificate has the same meaning as in the Act;

Previous Contributions means the monies paid to Council under the Current VPA, being the total sum of \$698,002.69 paid to Council on 16 October 2011;

Stage 1 means that part of the Development completed prior to this Agreement, being Stage 1 of the Development as set out in the Modified Consent and as evidenced by Interim Occupation Certificate dated 24th August 2012 for Construction Certificate 861/2010/B, as per plan in Attachment A to this Agreement.

Stage 2 means those parts of the Development other than Stage 1;

- (c) Delete the definitions of "Proposed Lot 3" and "Monetary Contributions".

4.1.3 Schedule 1 is deleted and replaced with the Schedule 1 of this Agreement;

4.1.4 Clause 5 is deleted and replaced with the following:

5 MONETARY CONTRIBUTIONS

5.1 The Developer and Council agree that:

- (a) The Developer paid the Previous Contributions to Council on 16 October 2011; and
- (b) As at November 2011 the indexed value of the Previous Contributions was \$719,111.64, of which \$602,415.78 related to Stage 1 and \$116,695.86 related to Stage 2; and
- (c) The Developer has met its obligation to pay developer contributions in respect to Stage 1 of the Development by the payment of the component of the Previous Contributions that the Developer and Council have agreed relate that Stage 1; and
- (d) Council will repay the sum calculated in accordance with the following formula to the Developer within 14 days of the date on which this clause becomes operative:

$$\text{Amount to be repaid} = \$116,695.64 \times \frac{\text{CPI-B}}{\text{CPI-A}}$$

where:

CPI-B is the Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the time of the repayment required by this clause 5.1(d);

CPI-A The Consumer Price Index Number (Sydney – All Groups) last published by the Australia Bureau of Statistics as at November 2012.

- (e) The Developer and Council agree that the repayment that Council is required to make pursuant to cl. 5.1(d) is repayment of that part of the Previous Contributions that relates to Stage 2 of the Development.

- 5.2 The Developer agrees to pay to Council a monetary contribution calculated in accordance with the following in respect to Stage 2 of the Development, such payment to be paid prior to the issue of an Occupation Certificate in respect to Stage 2:

Developer contribution to be paid = \$455, 814.52 x $\frac{\text{CPI-C}}{\text{CPI-A}}$

where:

CPI-C is the Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the time of the contribution is to be paid by this clause 5.2);

CPI-A The Consumer Price Index Number (Sydney – All Groups) last published by the Australia Bureau of Statistics as at November 2012.

- 5.3 Council and the Developer agree that:

- (a) no amendment will be made to the contributions required to be paid under this Agreement as a result of the adoption of any Development Contributions Plan; and
- (b) Schedule 1 to this Agreement identifies the purposes for which the Previous Contribution and the contributions to be paid pursuant to clause. 5.2 are made.

- 5.4 In the event that the Modified Consent is further modified so that Stage 2 of the Development is to be completed in more than one stage then Council may give notice in writing to the Developer that permits the contributions that the Developer is required to pay to Council pursuant to cl. 5.2 to be paid by way of instalments. The Developer acknowledges that Council has an absolute discretion whether it gives any such notice and as to the content of that notice.

- 4.1.6 Clause 6 is deleted.
- 4.1.7 Clause 7 is deleted.
- 4.1.8 Clause 8.1 is deleted and replaced with the following

8.1 *The parties agree that:*

- (a) *Nothing in this Agreement operates to fetter, in any way, Council's ability to impose on any grant of consent for Future Development of the Developer Land a condition requiring the making of a contribution for the purpose of s. 94 and/or 94A of the Act; and:*
- (b) *Nothing in this Agreement operates to confer any credit to the Developer or any other person in respect to any Future Development of the Developer Land.*

Affirmation

- 4.2 Other than the variation to the VPA given effect by this Agreement, the Parties ratify and affirm the VPA in all other respects.

5. RETURN OF BANK GUARANTEE

Council will return the Bank Guarantee to the Developer within fourteen (14) days of the date on which this Deed becomes operative.

6. RELEASE

Release of the Church

- 6.1 The Parties acknowledge and agree that the Church has met its obligations under the VPA.
- 6.2 The Parties agree that as from the date of this Deed, Council and the Developer release and discharge the Church from all its obligations under VPA and agree:
- (a) *not to make any claim or demand or commence any action or proceedings against the Church in respect of the VPA; and*
 - (b) *that this Deed may be pleaded in bar in any such action or proceeding.*

Release of Council and Developer

- 6.3 The Church releases Council and the Developer from all claims arising under the VPA as from the date of this Agreement.

7. REGISTRATION

- 7.1 The Developer agrees to procure, at no cost to Council, the registration of this Agreement pursuant to section 93H of the Act on the relevant folios of the Register pertaining to the Land as soon as practicable following the execution of this Agreement. This obligation includes the Developer procuring, at no cost to Council, the written consent of any mortgagee or other person holding an interest in the Developer Land that is necessary to effect the registration required by this clause.

8. COSTS

- 8.1 The Developer agrees to pay all of its costs (inclusive of GST) in connection with this Agreement, including the negotiation and execution of this agreement, all legal advice and costs associated with this Agreement, and the registration of this agreement in accordance with clause 8 of this Agreement.
- 8.2 The Developer agrees to pay to Council the sum of \$5,500 (inclusive of GST) towards the negotiation, preparation, processing and execution of this agreement. This payment may be deducted by Council from any amount that Council is required to pay to the Developer pursuant to clause 5.1(d) of Current VPA, as modified by clause. 5 of this Agreement.

SCHEDULE 1

Amount and Timing of Monetary Contributions

Item	Description	Rate as at May 2010	Factor	Amount required under Current VPA (as at M by 2010)	Previous Contributions Paid (as at 16/8/2011)	Previous Contributions Paid Instead to November 2012	Total Amount required to be paid under this Agreement, ingested to November 2012	Relative to total area 1	Stage %	Payment required for Stage 1	Required to be paid prior to issue of the construction certificate for Stage 2
Integrated Water Cycle Management and Drainage											
NDA											
1	Integrated Water Cycle Management	\$ 27,050.00	1.348	\$ 36,520.45			\$38,216	Relates to total land area	100%	\$ 38,216.44	\$ -
2	Drainage and Water Quality - Land	\$ 34,784.00	1.348	\$ 46,888.63			\$50,337	Relates to total land area	100%	\$ 50,338.54	\$ -
3	Drainage and Water Quality - Works	\$ 58,660.00	1.348	\$ 79,060.20			\$84,873	Relates to total land area	100%	\$ 84,873.65	\$ -
Studies, Valuations and Administration											
NDA											
4	Studies and Land Valuations	\$ 2,710.00	1.348	\$ 3,653.08			\$3,922	Relates to total land area	100%	\$ 3,921.69	\$ -
5	Plan Administration	\$ 2,292.00	1.348	\$ 3,093.82			\$3,317	Relates to total land area	100%	\$ 3,316.79	\$ -
Sub-Total											
\$ 125,535.00 1.348 \$ 168,221.18 \$181,964											
Roadworks											
DVT's											
6	Sparks Road/Minnesota Road Intersection	\$ 47.40	2.170	\$ 102,858.00			\$110,421	based on 48% of total traffic generation	48%	\$ 53,002.12	\$ 57,418.97
7	Sparks Road/Entrance Drive Intersection	\$ 48.12	2.170	\$ 104,420.40				Now being paid for by the State Govt.	0%	\$ -	\$ -
8	Link Road Stage 1	\$ 51.44	2.170	\$ 111,624.80			\$119,833	based on 48% of total traffic generation	48%	\$ 57,519.60	\$ 62,312.50
9	Link Road Stage 2	\$ 139.07	2.170	\$ 301,781.90			\$323,972	based on 48% of total traffic generation	48%	\$ 155,505.44	\$ 168,465.31
10	Sparks Road Pedestrian Facilities at Railway Overpass	\$ 4.69	2.170	\$ 10,165.60			\$10,902	based on 48% of total traffic generation	48%	\$ 5,233.12	\$ 5,669.21
11	Mairami/Hawthorn Road Intersection	\$ 10.45	2.170	\$ 22,676.50			\$24,344	based on 48% of total traffic generation	48%	\$ 11,685.07	\$ 12,659.82
12	Entrance Drive Intersection	\$ 31.35	2.170	\$ 68,029.90			\$73,032	based on 48% of total traffic generation	48%	\$ 35,055.20	\$ 37,976.47
13	Pacific Highway/Chelmsford Road Intersection	\$ 15.60	2.170	\$ 33,852.00			\$36,341	based on 48% of total traffic generation	48%	\$ 17,443.74	\$ 18,897.38
14	St. Artrid/Railway Station Intersection	\$ 42.38	2.170	\$ 91,964.60			\$98,727	based on 48% of total traffic generation	48%	\$ 47,388.82	\$ 51,337.89
15	Chelmsford Road/Arizona Road Intersection	\$ 33.91	2.170	\$ 73,584.70			\$78,095	based on 48% of total traffic generation	48%	\$ 37,517.76	\$ 41,077.68
16	Roadworks and Traffic Management - Future Development	\$TEA	TEA				\$0				
Sub-Total											
\$ 920,948.00 \$ 424.40 \$ 876,566.39 \$ 420,151.87 \$ 455,614.52											
TOTAL											
\$ 1,096,169.18 \$ 658,022.58 \$ 719,111.54 \$ 602,415.76 \$ 655,314.54											
Proposed Refund											
\$ 5,500.00											
Refund, less costs above											
\$ 113,955.86											

EXECUTED as a DEED

Date:

Executed for and on behalf of Wyong Shire Council:

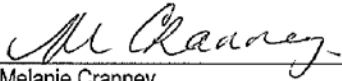
Signature of General Manager

Signature of Witness

Michael Whittaker

Name

Executed for and on behalf of Warnervale Medical Holdings Pty Limited as trustee of the Warnervale Medical Holdings Unit Trust in accordance with section 127(1) of the Corporations Act:


Melanie Cranney
Sole Director

The common seal of The Trustees
of the Roman Catholic Church for
the Diocese of Broken Bay)
ABN: 79 031 652 544 was hereunto)
affixed in pursuance of a resolution)
passed at a meeting of the said Body)
Corporate in the presence of the Bishop)
and two other members thereof all of)
whose signatures are set opposite hereto:)

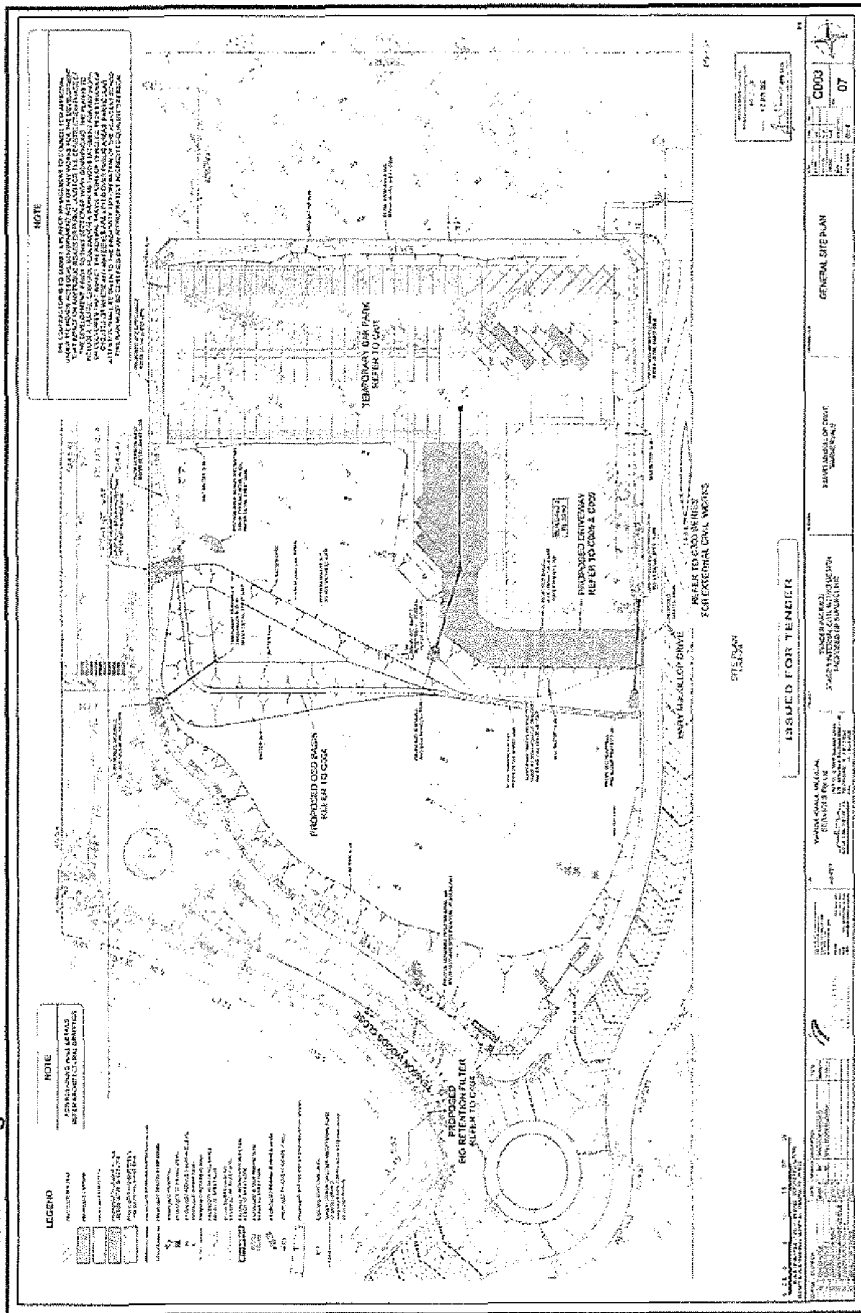
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Bishop

.....
Member

.....
Member

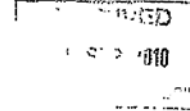
ANNEXURE A

Plan of Stage 1



ANNEXURE B

Council Reference LDOC009115



VOLUNTARY PLANNING AGREEMENT

Wyong Shire Council (ABN 47 054 613 735)

And

The Trustees of the Roman Catholic Church of the Diocese of Broken Bay
(ABN 79 031 652 544)

And

Warnervale Medical Holdings Pty Limited (ACN 140069889) as trustee for
Warnervale Medical Holdings Unit Trust (ABN 92 338 068 421)

Final v1 16 June 2010

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Final v1 16 June 2010

PLANNING AGREEMENT

DATE 19.2.2010

PARTIES

Wyong Shire Council of Council Chambers, Hely Street, Wyong in the State of New South Wales ("Council")

and

The Trustees of the Roman Catholic Church of the Diocese of Broken Bay of Building 2, 423 Pennant Hills Road, Pennant Hills in the State of New South Wales ("the Owner")

and

Warnervale Medical Holdings Pty Limited as trustee for the Warnervale Medical Holdings Unit Trust of PO Box 27, Toukley in the State of New South Wales ("the Developer")

BACKGROUND

- a. The Owner has lodged a development application with Council for the subdivision of the Land. If consent is granted by Council to that application, the Owner intends selling Proposed Lot 3 of that subdivision to the Developer.
- b. The Developer has lodged the Development Application with Council to develop Proposed Lot 3 for a health services facility (General Practitioner super clinic) and associated facilities, including carparking and strata subdivision.
- c. The Developer acknowledges that the Development generates the need to upgrade existing and/or provide new local community infrastructure.
- d. The Warnervale Town Centre Development Contributions Plan has not been adopted and the Developer has offered to enter into this Agreement to pay Council Monetary Contributions towards various categories of local community infrastructure.
- e. The Developer intends to carry out the Future Development of the Land, subject to Council approval.

OPERATIVE PROVISIONS

1 PLANNING AGREEMENT UNDER THE ACT

1.1 The parties agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2 APPLICATION OF THIS AGREEMENT

2.1 This Agreement applies to the Land.

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3 OPERATION OF THIS AGREEMENT

3.1 Subject to clause 3.2, this Agreement takes effect once executed by all parties.

3.2 Clauses 5 and 6 of this Agreement will only operate if and when:

- (a) the subdivision of the Land has been approved;
- (b) the purchase of proposed Lot 3 by the Developer has been completed, or the Developer has been granted exclusive possession of Proposed Lot 3; and
- (c) the Development Consent is granted.

3.3 This Agreement identifies the arrangements with regards to the payment of Monetary Contributions towards off-site community infrastructure.

4 DEFINITIONS AND INTERPRETATION

4.1 In this Agreement the following definitions apply:

Act means the Environmental Planning and Assessment Act 1979 (NSW);

Authority means Council, the NSW Department of Environment, Climate Change and Water (DECCW), the NSW Department of Planning (DoP), the NSW Roads and Traffic Authority (RTA) and any heirs and successors of those organisations;

Bank Guarantee means an unconditional and irrevocable undertaking issued by a major Australian bank in favour of Council in a form acceptable to Council (acting reasonably) to pay on demand the amount specified in the guarantee;

Concept Plan/s means the plan/s at Annexure A to this Agreement;

Council means Wyong Shire Council or its representatives or assigns;

Deal, Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or disencumbering or otherwise dealing with the Land;

Developer means Warnervale Medical Holdings Pty Limited as trustee for the Warnervale Medical Holdings Unit Trust or its representatives or assigns;

Development means the development of the Land as shown on the Concept Plan/s and the Development Application;

Development Application means the Development shown in development application No. 1396/2009 lodged with Council;

Development Consent means any consent issued by or on behalf of Council in relation to Development Application 1396/2009;

Development Contributions Plan means the Warnervale Town Centre Section 94 Development Contributions Plan, or any other similarly named document, that permits Council to require the payment of Monetary Contributions for development within the Warnervale Town Centre;

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Future Development means the development of those portions of the Concept Plan/s which are hatched and entitled "Future Development" within Proposed Lot 3. The future development of Proposed Lot 3 is understood to involve a private hospital which will generate additional traffic and therefore a need to contribute to surrounding road and intersection upgrades;

Land means Lot 8 DP 7738 – otherwise known as 85 Sparks Road, Woongarra;

LPMA means the Land and Property Management Authority, or its successors or assigns;

Minister means the Minister administering the Act, from time to time;

Monetary Contributions means the monetary contributions specified at clause 5 and in Schedule 1 of this Agreement;

Owner means the Trustees of the Roman Catholic Church of the Diocese of Broken Bay or its representatives or assigns;

Parties mean the Council, the Owner and the Developer, including their successors and assigns;

Party means a party to this Agreement including its successors and assigns;

Proposed Lot 3 means the portion of the Land identified Part 3 in the Concept Plan/s;

Regulation means the Environmental Planning and Assessment Regulation 2000;

Roads mean those roadwork and intersection upgrade projects identified as Items 6-15 in the table in Schedule 1.

Warnervale Town Centre means an area of land within the local government area of Wyong Shire, and bounded by Hiawatha, Hakone and Sparks Roads and east of Bruce Crescent.

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) The headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

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- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular and a reference to any gender denotes the other genders, unless otherwise defined.
- (k) References to the word "include" or "including" are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) The schedule to this Agreement forms part of this Agreement.

5 PAYMENT OF THE MONETARY CONTRIBUTIONS

- 5.1 The Developer agrees to pay the Monetary Contributions to Council in the amounts specified (including any indexation costs calculated in accordance with clause 6), and by the times specified in Schedule 1 of this Agreement.
- 5.2 Where a Development Contributions Plan has been adopted by Council for the Warnervale Town Centre, and no payment to Council of any of the Monetary Contributions has been made, the amount of Monetary Contributions payable under this Agreement will only be in accordance with the amounts specified at Schedule 1 of this Agreement where the total contributions as calculated by Council as payable under the Warnervale Town Centre Contributions Plan are greater than those required in total under Schedule 1.
- 5.3 In circumstances where clause 5.2 applies, and the total contributions as calculated by Council as payable under the Development Contributions Plan are less than the total Monetary Contributions payable pursuant to Schedule 1, then the Developer can choose to pay the contributions under the Development Contributions Plan in lieu of the Monetary Contribution amounts specified in Schedule 1, as applicable. Nonetheless, the times specified for payment of Monetary Contribution amounts under Schedule 1 remain as specified in that Schedule.
- 5.4 For the avoidance of doubt, where Monetary Contributions have been paid under this Agreement, and the Development Contributions Plan has not been adopted at the time of payment, the Developer agrees that those Monetary Contributions paid will not be revised or refunded, and all Monetary Contributions as required by the terms of Schedule 1 to this Agreement are to be paid, even if the Development Contributions Plan at a later point in time allows or permits lesser contributions.
- 5.5 The Parties agree that Monetary Contributions for Roads for any Future Development will be calculated, levied and paid in accordance with the following formula and at the times specified in Schedule 1:

$R \times \text{DVTs}$

Where:

R Rate per DVT of \$424.40 (indexed in accordance with clause 6)

DVTs Number of daily vehicles trips generated by the Future Development, as determined by Council in consultation with the Developer.

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6 INDEXATION OF AMOUNTS PAYABLE BY THE PARTIES

- 6.1 The Monetary Contributions payable under this Agreement (including all upper limit amounts) are to be indexed from the date of execution of this Agreement in accordance with the following formula:

$$C \times \frac{\text{CPI 2}}{\text{CPI 1}}$$

Where:

C	The original value of the Monetary Contribution identified in this Agreement
CPI 2	The Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the time of payment
CPI 1	The Consumer Price Index Number (Sydney – All Groups) last published by the Australia Bureau of Statistics at the date of execution of the Planning Agreement

7 SECURITY

- 7.1 The Developer will lodge with Council a Bank Guarantee to the value of \$60,000.00 within 10 business days after execution of this Agreement.
- 7.2 If any of the Monetary Contributions are not paid in full by the times specified in Schedule 1, Council may call upon the Bank Guarantee without reference to the Developer, and apply that money as a payment or part payment of the outstanding Monetary Contributions, but without prejudice to any other rights Council has (under this Agreement or otherwise) to pursue outstanding Monetary Contributions
- 7.3 Council agrees to discharge the Bank Guarantee when the Monetary Contributions have been paid in full for Items 1-15.

8 APPLICATION OF SECTION 94 & 94A OF THE ACT TO THE DEVELOPMENT

- 8.1 The Parties agree that Council is excluded from applying a condition of consent of the nature referred to in section 94 or 94A(1) of the Act in relation to Future Development of Proposed Lot 3, except as provided for in clause 5.5 of this agreement.
- 8.2 The Parties agree that Council retains the right to levy water and sewer charges against the Development and Future Development of Proposed Lot 3 pursuant to Section 306 of the Water Management Act 2000.

9 REGISTRATION OF THIS AGREEMENT

- 9.1 The Owner and Developer agree to procure the registration of this Agreement pursuant to section 93H of the Act on the relevant folios of the Register pertaining to the Land as soon as practicable following execution of this Agreement and obtain the written consent of any mortgagee or other person with an interest in the Land to such registration.

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To that end the Owner and Developer agree to deliver to the Council within 7 working days of the date of execution of this agreement, all necessary documents in registrable form to enable Council to lodge those documents at LPMA and obtain immediate registration of this agreement on the title to the Land.

- 9.2 Council agrees that once the plan of subdivision creating Proposed Lot 3 has been registered, it will consent to have this Agreement removed from the remainder of the Land, such that this Agreement will only apply to the newly created Lot 3.

10 DEVELOPER & OWNER WARRANTIES AND INDEMNITIES

- 10.1 The Developer warrants to Council that:

- (a) It intends to purchase Proposed Lot 3 from the Owner;
- (b) It is able to fully comply with its obligations under this Agreement;
- (c) It has full capacity to enter into this Agreement; and
- (d) There is no legal impediment to it entering into this Agreement, or performing its obligations under it.

- 10.2 The Developer guarantees to Council the due and punctual payment of all moneys due and payable or from time to time due and payable to Council by the Developer pursuant to or in connection with this Agreement.

- 10.3 The Developer agrees that Council is not required to proceed against the Developer or exhaust any remedies it may have in relation to the Developer or enforce any security it may hold with respect to the Developer's obligations, but is entitled to demand and receive payment when any payment is due under this Agreement.

- 10.4 The Owner warrants that it will promptly register with LPMA the relevant plans of subdivision following the grant of any development consent so as to enable it to sell Proposed Lot 3 to the Developer.

11 REVIEW OF THIS AGREEMENT

- 11.1 Any amendments, variation or modification to or of, or consent to any departure by any party from the terms of this Agreement shall have no force or effect unless effected by a document executed by the parties which complies with the requirements of Section 93G of the Act.
- 11.2 Each of the Parties individually reserves the right to review this Agreement if and when there is a grant of approval for a modification to the Development Consent.

12 DISPUTE RESOLUTION

- 12.1 If a dispute arises out of or relates to this Agreement (including any dispute as to the meaning, performance, validity, subject matter, breach or termination of this Agreement or as to any claim in tort, in equity or pursuant to any statute) (Dispute), any court or arbitration proceedings shall not be commenced by or against Council, the Developer or their successors or assigns, relating to the Dispute unless the parties to the Dispute (Parties) have complied with this clause, except where a party seeks urgent interlocutory relief.

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- 12.2 A party claiming that a Dispute has arisen under or in relation to this Agreement is to give written notice to the other parties to the Dispute, specifying the nature of the Dispute.
- (i) The Parties agree to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and to take action to have the Dispute mediated within 7 working days of the receipt of written notice of the Dispute.
 - (ii) The Parties agree that the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.
 - (iii) The Parties to the mediation will be jointly responsible for the fees of the mediation and each party shall bear its own costs.
 - (iv) The Parties may, but are not required, to enter into a written agreement before mediating a Dispute.
 - (v) If any procedural aspects are not specified sufficiently in the rules under clause 12.1, the Parties agree to conduct the mediation regarding those aspects in accordance with the determination of the mediator whose decision regarding those aspects is final and binding on the Parties.
 - (vi) A legal representative acting for either of the Parties may participate in the mediation.
- 12.3 From the time when a notice of Dispute is served, neither party shall take action to terminate this Agreement, until after the conclusion of the mediation.
- 12.4 Should mediation fail to resolve any dispute then the dispute shall be determined by arbitration pursuant to the Commercial Arbitration Act 1984 and the General Manager of the Council shall request the President for the time being of The Law Society of New South Wales to appoint an arbitrator to carry out such arbitration in accordance with the provisions of such Act.
- 12.5 Despite clauses 12.1, 12.2, 12.3 and 12.4, either Council or one or more of the Developers may institute court proceedings to seek urgent equitable relief in relation to a dispute or difference arising out of or in connection with this Agreement.

13 NOTICES

- 13.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below
- (b) Faxed or emailed to that Party at the relevant details set out below

- (i) Council: Wyong Shire Council
Attention: Senior Contributions Officer
Address: DX 7306 WYONG
Fax No: (02) 4350 2098
Email: wesley.wilson@wyong.nsw.gov.au

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- (ii) Owner: The Trustees of the Roman Catholic Church of the Diocese of Broken Bay
Attention: Karl Henry, Property Manager
Address: PO Box 340, Pennant Hills, NSW, 1715
Fax No: (02) 9847 0501
- (iii) Developer: Warnervale Medical Holdings Pty Limited
Attention: Denise Barrett or Peter Buckingham-Jones
Address: PO Box 27, Toukley, NSW, 2263
Fax No: (02) 4397 2544
Email: denise.barrett@toukleydoctors.com.au or
peter.buckinghamjones@toukleydoctors.com.au

- 13.2 If a party gives the other party 3 working days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.
- 13.3 Any notice, consent, information, application or request is to be treated or given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, 2 working days after it is posted.
 - (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 13.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if it is on a business day, after 5.00pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

14 APPROVALS AND CONSENT

- 14.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, Council may give or withhold an approval or consent to be given under this Agreement in Council's absolute discretion and subject to any conditions determined by the Council. Council is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

15 ASSIGNMENT AND DEALINGS

- 15.1 The Developer and Owner agree with Council that they will not Deal, transfer or mortgage their interest in the Land prior to the registration of this Agreement as a Planning Agreement upon the title of the Land as contemplated in clause 9 of this Agreement.
- 15.2 Notwithstanding this clause, Council will not unreasonably withhold its consent to any transfer or mortgage provided that the proposed transferee or mortgagee consents on terms acceptable to Council to permit and facilitate registration of this Agreement at LPMA in the manner contemplated in clause 9.
- 15.3 The Developer and Owner agree that they will not lodge any caveat or other instrument upon the title of the Land which will prohibit or hinder registration of this Agreement at LPMA in the manner contemplated in clause 9 of this Agreement.

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16 COSTS

16.1 The Developer agrees to pay or reimburse the costs of Council in connection with the:

- (a) Negotiation, preparation and execution of this planning agreement, to a *maximum* of \$5,000.00;
- (b) Advertising and exhibiting this planning agreement in accordance with the Act, to a maximum of \$215.00, and
- (c) Registration of this planning agreement,

within 7 working days after receipt of a tax invoice from Council.

17 ENTIRE AGREEMENT

17.1 This Agreement contains everything to which the parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party before this Agreement was executed, except as permitted by law.

18 FURTHER ACTS

18.1 Each Party agrees to promptly execute all documents and do all such things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

19 GOVERNING LAW AND JURISDICTION

19.1 This Agreement is governed by the law of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of its Courts and Courts of appeal from them. The parties will not object to the exercise of jurisdiction by those Courts on any basis provided that the dispute resolution provisions in clause 12 of this Agreement have first been satisfied.

20 JOINT AND INDIVIDUAL LIABILITY AND BENEFITS

20.1 Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

21 NO FETTER

21.1 Nothing in this Agreement is to be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

22 SEVERABILITY

22.1 If a clause or part of a clause in this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of the Agreement is not affected.

23 WAIVER

23.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.



Handwritten signatures and initials: DRW, JR, and VRC.

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SCHEDULE 1**Amount and Timing of Monetary Contributions**

Item	Description	Rate*	Factor	Amount*	Timing
Integrated Water Cycle Management and Drainage					
1	Integrated Water Cycle Management	\$27,099	1.348ha	\$36,529.45	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
2	Drainage and Water Quality - Land	\$34,784	1.348ha	\$46,888.83	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
3	Drainage and Water Quality - Works	\$58,650	1.348ha	\$79,060.20	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
Studies, Valuations and Administration					
4	Studies and Land Valuations	\$2,710	1.348ha	\$3,653.08	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
5	Plan Administration	\$2,292	1.348ha	\$3,089.62	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
Sub-Total		\$125,535	1.348ha	\$169,221	
Roadworks and Traffic Management					
6	Sparks Road/Minnesota Road Intersection	\$47.40	2,170 DVTs	\$102,858	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
7	Sparks Road/Entrance Drive Intersection	\$48.12	2,170 DVTs	\$104,420	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
8	Link Road Stage 1	\$51.44	2,170 DVTs	\$111,625	Prior to the issue of the first Construction Certificate in respect of the Development as authorised by the Development Consent
9	Link Road Stage 2	\$139.07	2,170 DVTs	\$301,782	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent

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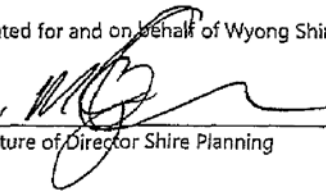
10	Sparks Road Pedestrian Facilities at Railway Overpass	\$4.68	2,170 DVTs	\$10,156	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
11	Mataram/Hiawatha Road Intersection	\$10.45	2,170 DVTs	\$22,677	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
12	Entrance Drive Intersection	\$31.35	2,170 DVTs	\$68,030	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
13	Pacific Highway/Chelmsford Road Intersection	\$15.60	2,170 DVTs	\$33,852	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
14	Sub-Arterial/Railway Station Intersection	\$42.38	2,170 DVTs	\$91,965	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
15	Chelmsford Road/Arizona Road Intersection	\$33.91	2,170 DVTs	\$73,585	Prior to the issue of an Occupation Certificate in respect of the Development as authorised by the Development Consent
16	Roadworks and Traffic Management – Future Development	\$TBA	TBA	\$TBA	Prior to the issue of the first Construction Certificate for the Future Development, as authorised by a consent
Sub-Total		\$424.40		\$920,950	
TOTAL				\$1,090,171	

*As at May 2010 – to be indexed at time of payment in accordance with formula in clause 6

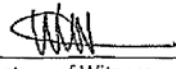
EXECUTED as an agreement

Date: 24.09.2010

Executed for and on behalf of Wyong Shire Council:


Signature of Director Shire Planning

Gina Vereker


Signature of Witness

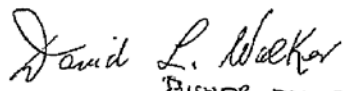

WESLEY WILSON
Name

Executed for and on behalf of The Trustees of Roman Catholic Church of the Diocese of Broken Bay in accordance with section 127(1) of the Corporations Act:



Director/Secretary (if not Sole Director)

Name [BLOCK LETTERS]

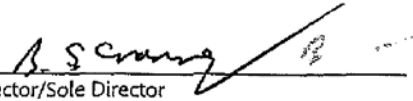

BISHOP DAVID L. WALKER

Director/Sole Director

VINCENT R. CASEY JACK ROBSON
Name [BLOCK LETTERS]

Executed for and on behalf of Warnervale Medical Holdings Pty Limited as trustee of the Warnervale Medical Holdings Unit Trust in accordance with section 127(1) of the Corporations Act:

Director/Secretary (if not Sole Director)

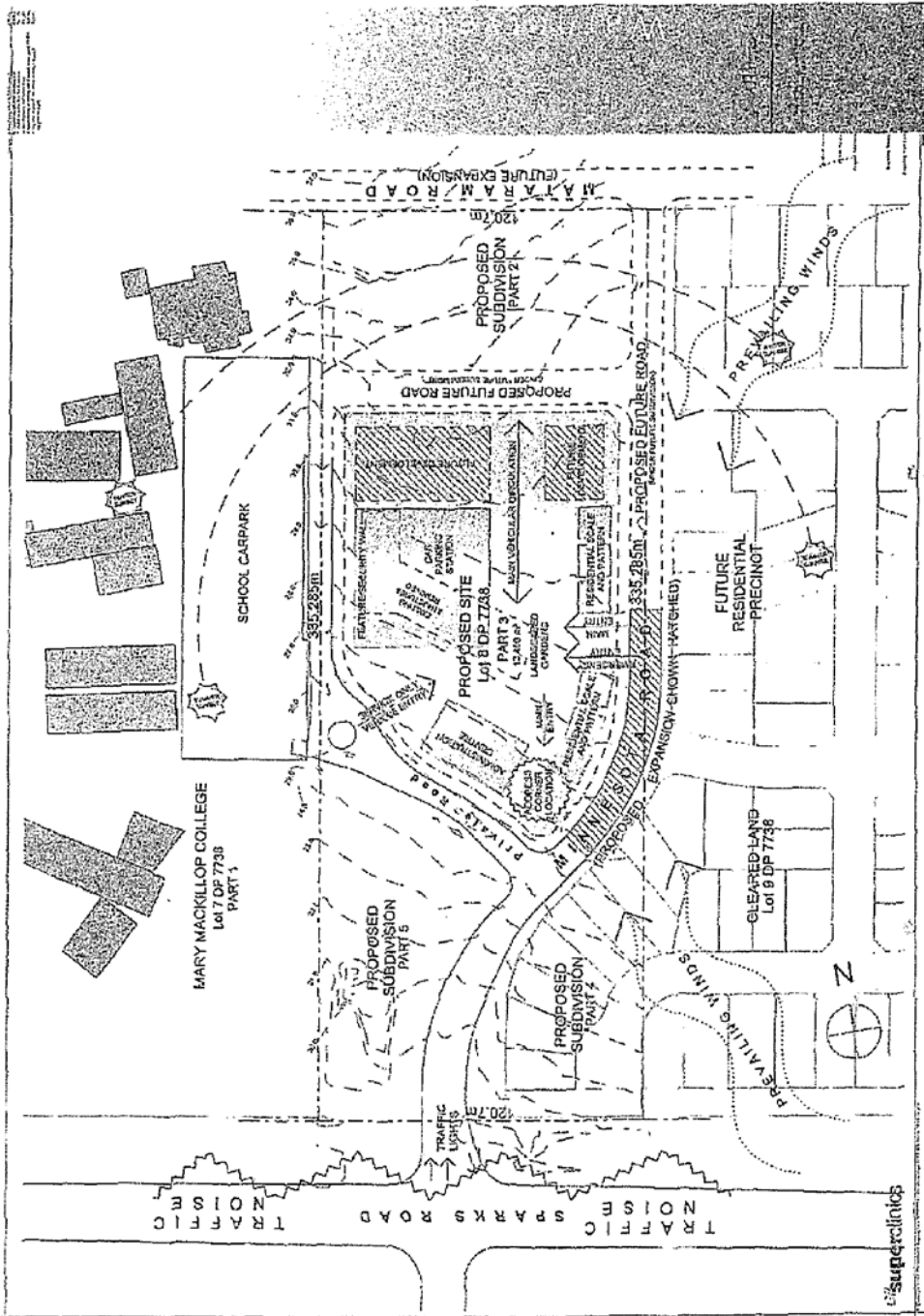
Name [BLOCK LETTERS]


Director/Sole Director

BRADLEY STEPHEN CRANLEY
Name [BLOCK LETTERS]

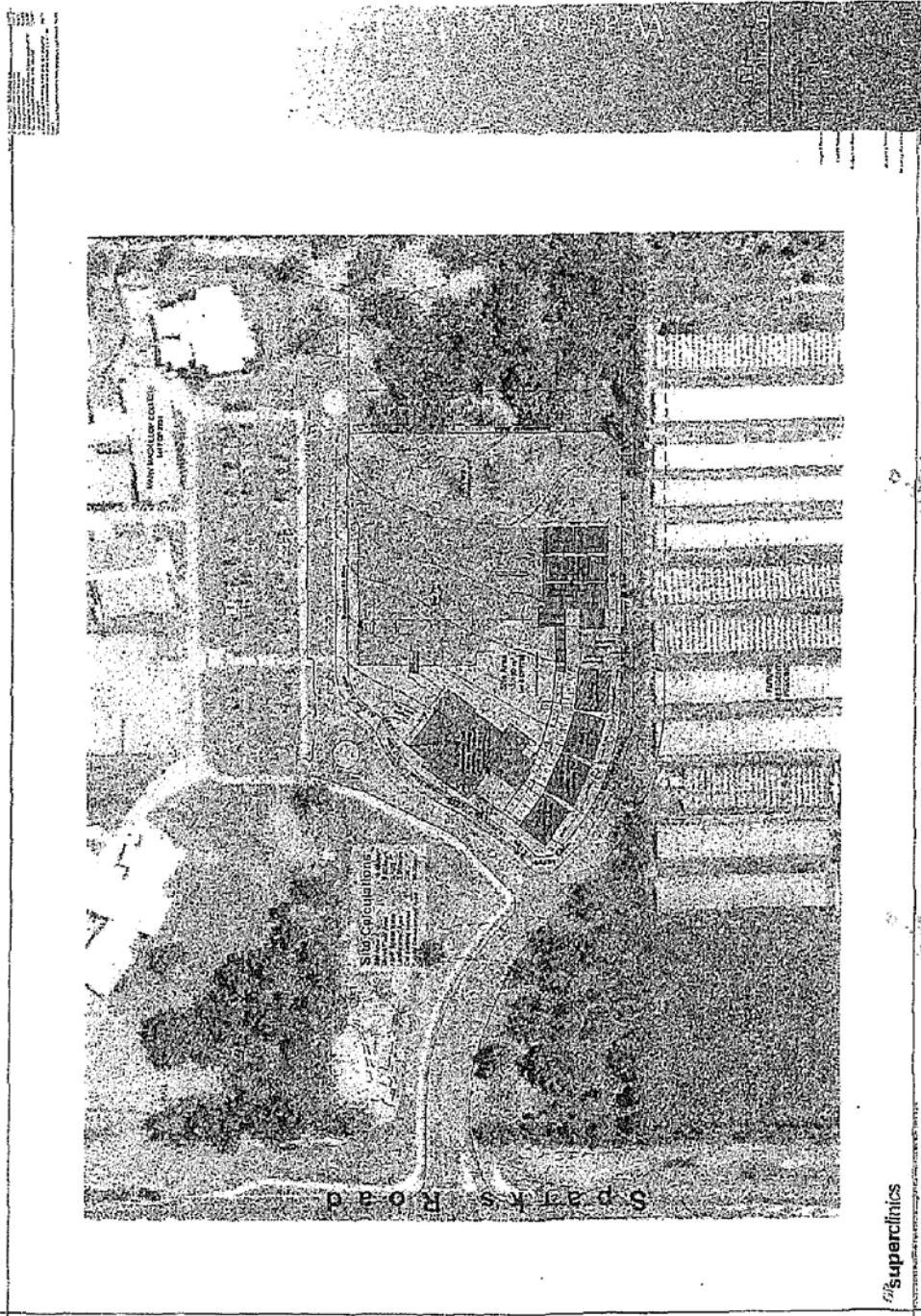
ANNEXURE A

Concept Plan/s



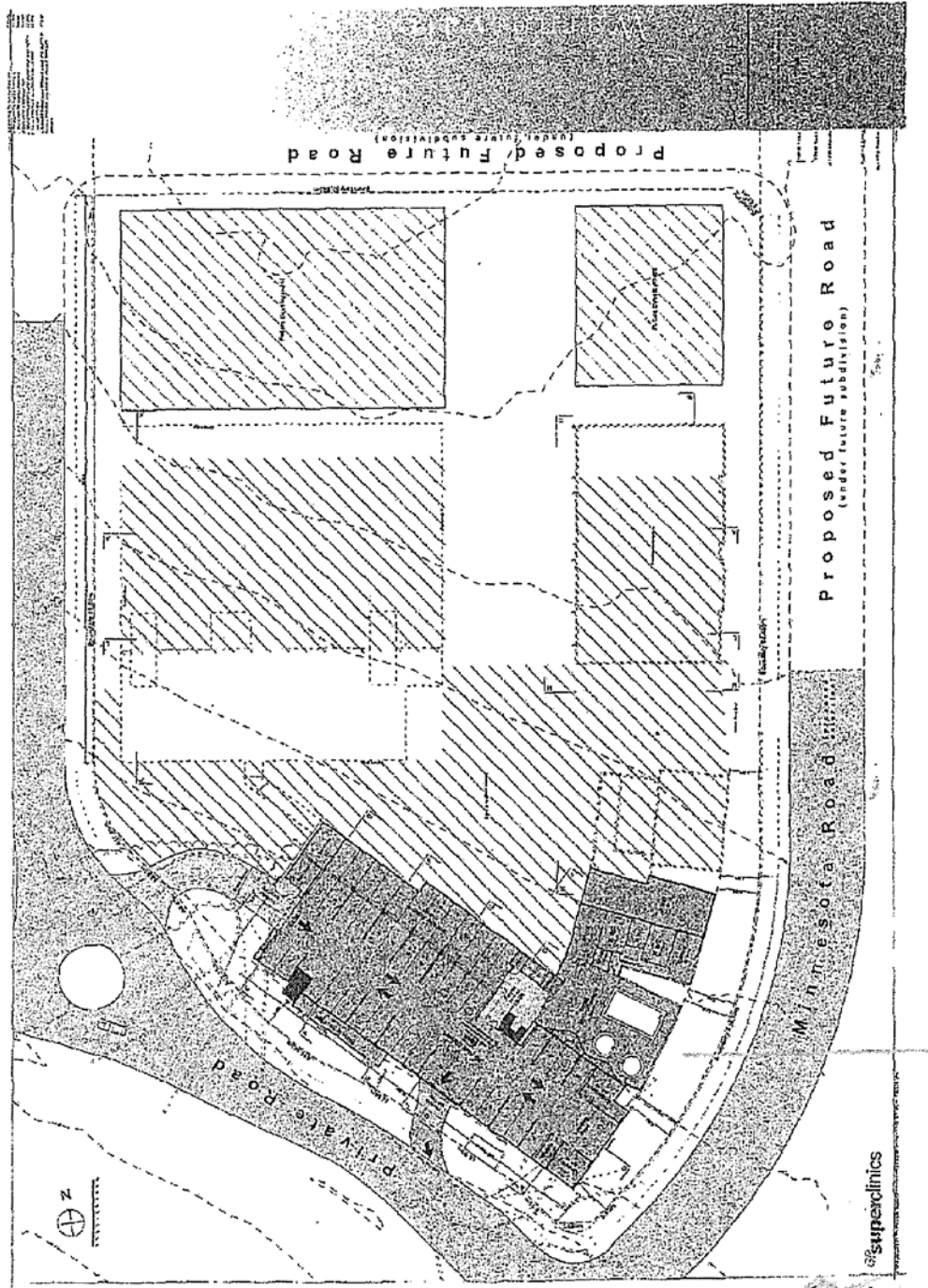
Final v1 16 June 2010

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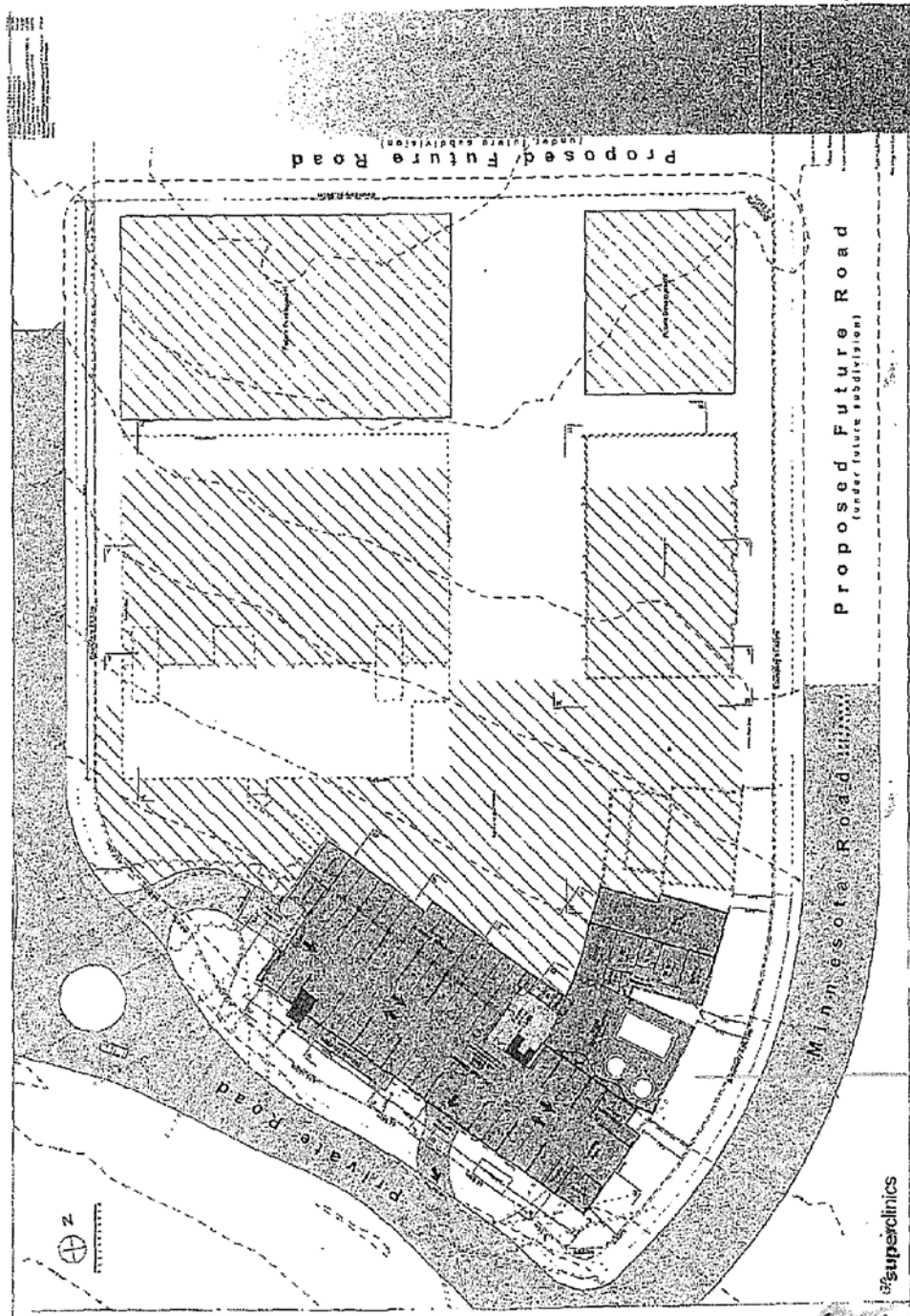
Final v1 16 June 2010

JW
JR *RC*
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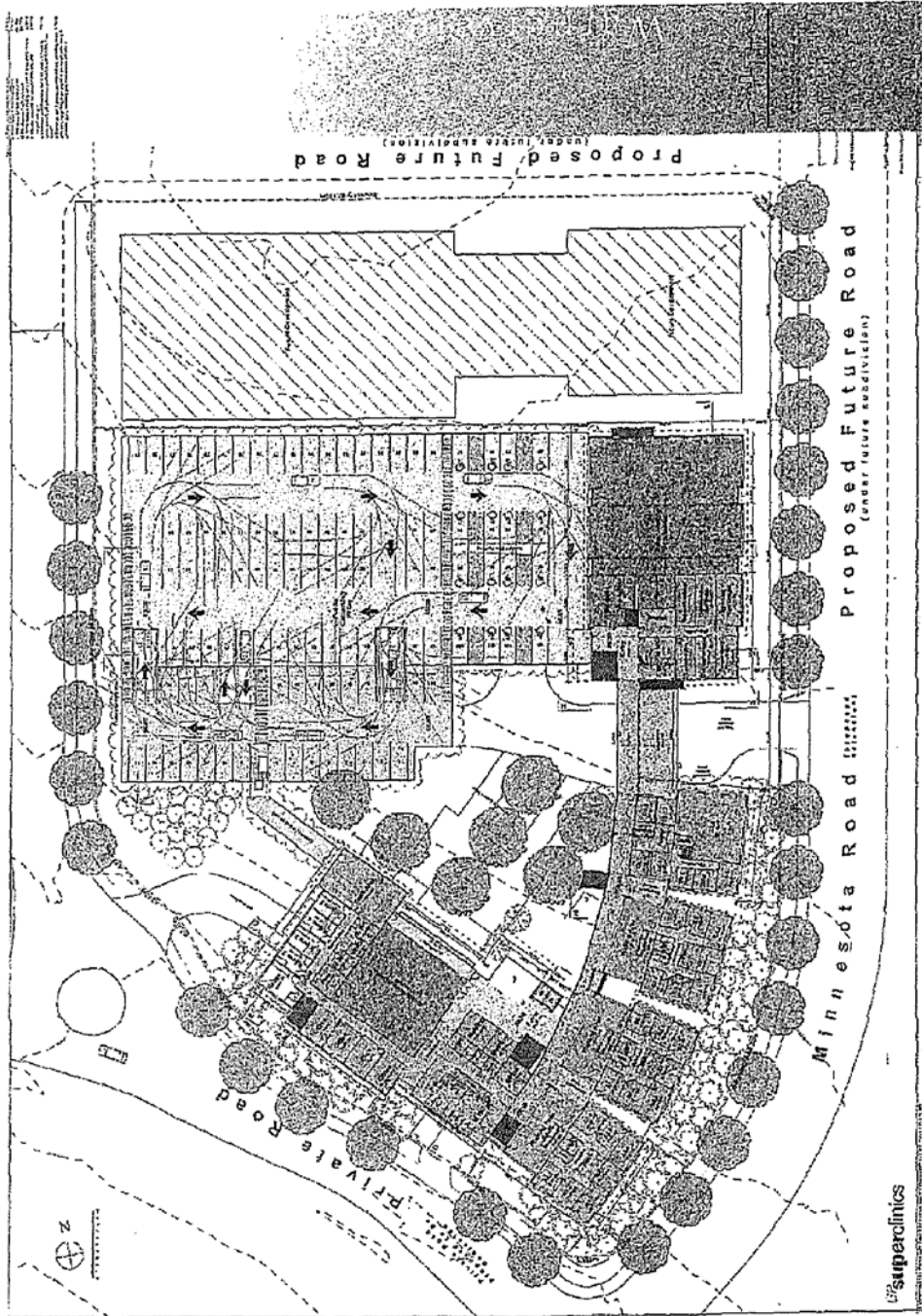
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PLAN OF MANAGEMENT NO 16

FOR

**COUNCIL OWNED FORESHORE LAND AT
THE ENTRANCE NORTH, THE ENTRANCE, LONG JETTY,
BLUE BAY, TOOWOON BAY, SHELLY BEACH AND BATEAU
BAY**

Amendment No	Adopted
0	

\$17.25 (GST inclusive)
RC 34

Note: This Plan should be read in conjunction with the Management Plan of Crown Land Foreshore Reserves at The Entrance North, The Entrance, Blue Bay, Toowoan Bay, Shelly Beach and Bateau Bay.

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SECTION 1 - GENERAL

INTRODUCTION

The plan has been prepared by Wyong Shire Council under the provisions of the Local Government Act, 1993 which requires Councils to prepare plans of management for all land under Council ownership or control classified as community land.

The Local Government Act, 1993 provides that community land is required to be used and managed in accordance with the plan of management.

The plan of management has been written to outline the ways that the land will be used and the objectives for management. It may be used to determine the allocation of priorities for use of resources and funds.

The procedure for the preparation of plans of management involves public exhibition and consultation processes prior to adoption by Council. The plan may be amended by a subsequent plan of management. This plan is one of a number of plans of management for community land in Wyong Shire.

Plans of management are available for public inspection and purchase from the Council.

LAND TO WHICH THE PLAN APPLIES

This plan applies to all Council owned foreshore community land in the suburbs of The Entrance North, The Entrance, Long Jetty, Blue Bay, Toowoan Bay, Shelly Beach and Bateau Bay. The land covered by this plan is identified in Schedule 1 and shown in Figures 1, 2 and 3. This plan should be read in conjunction with the Management Plan for similar Crown Land holdings in the same area.

Figure 1



Figure 2

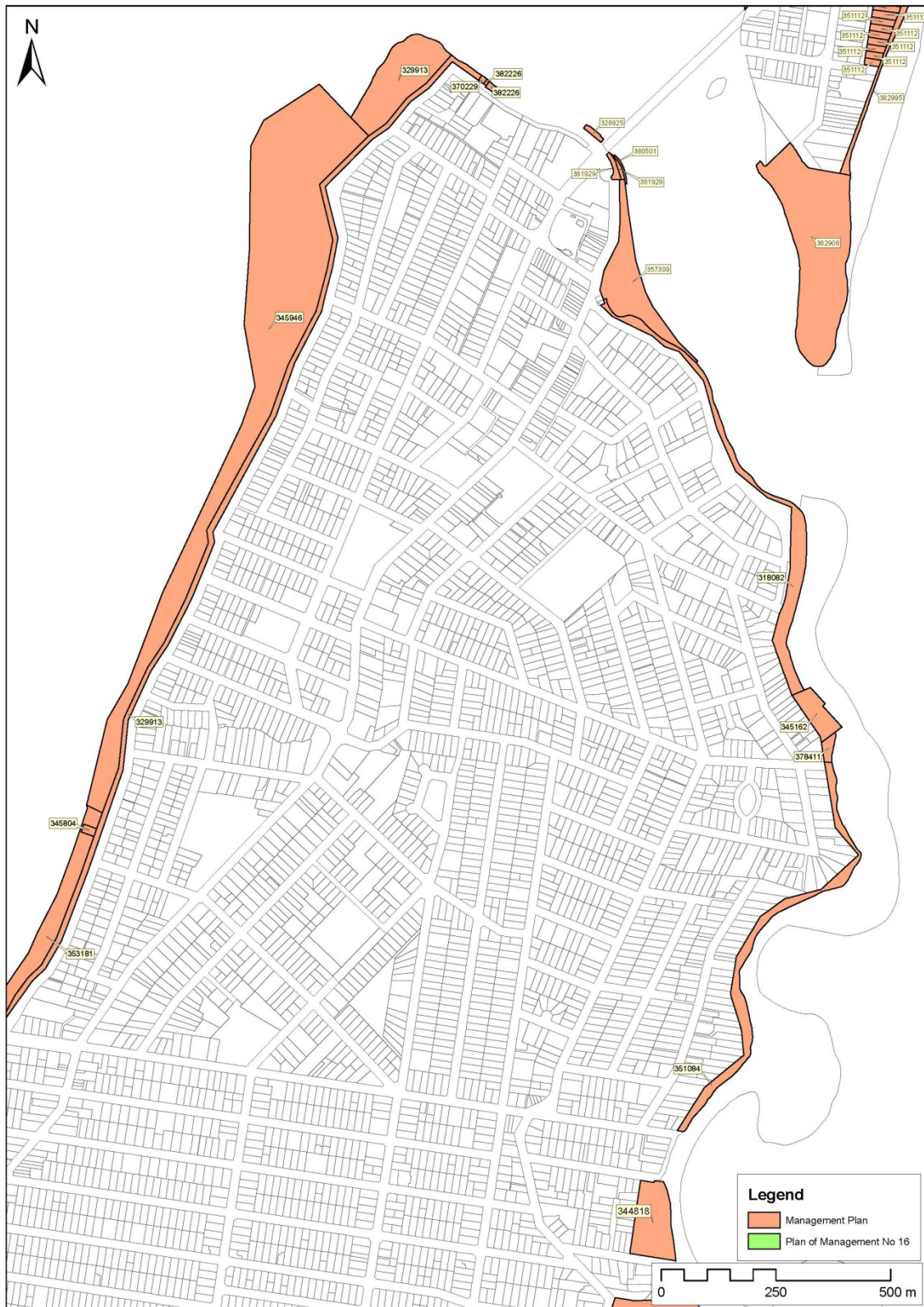
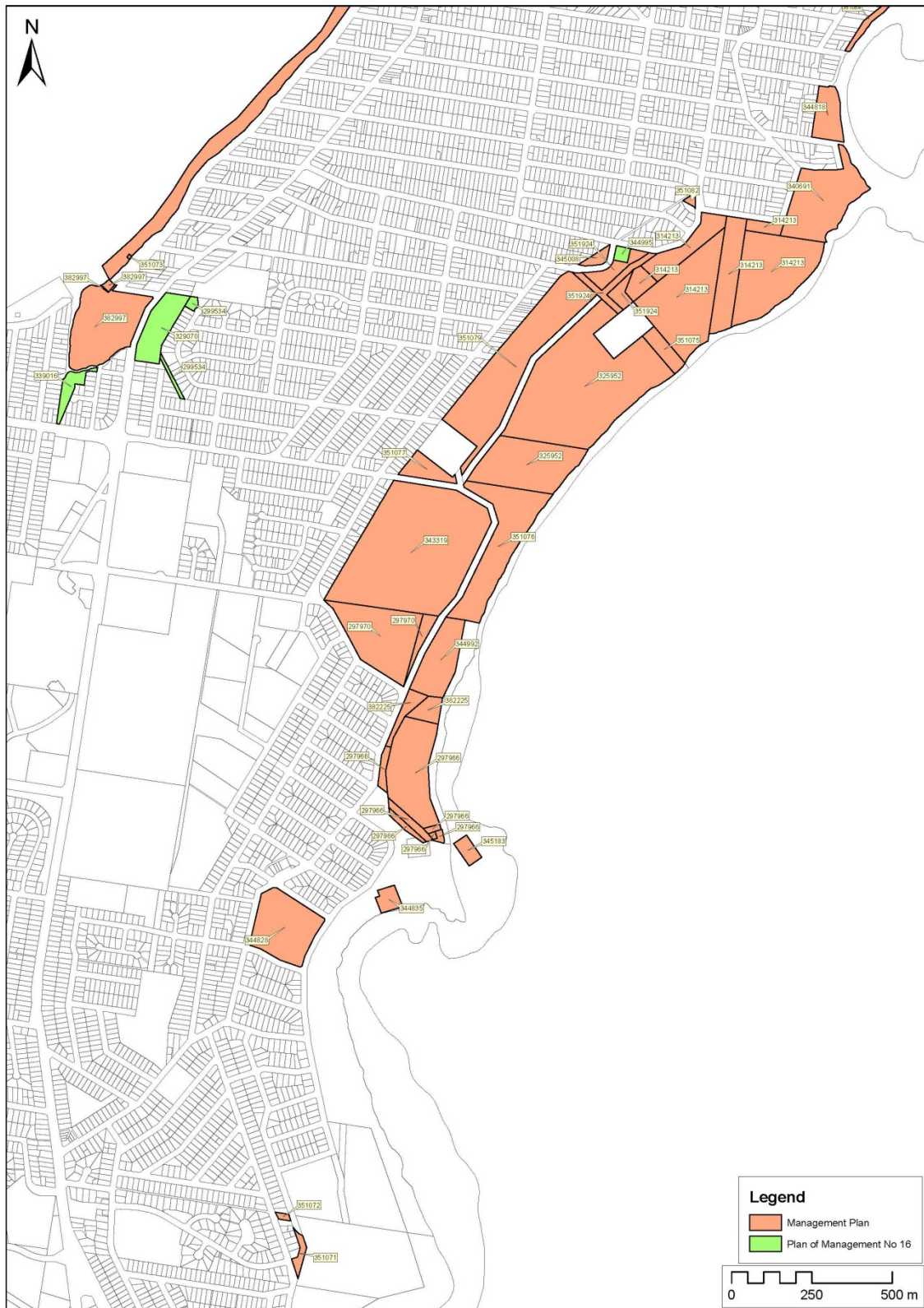


Figure 3



STRATEGIC PLANNING OBJECTIVES

Wyong Shire Council owns many parcels of community land and seeks to ensure that land is managed in a cost effective way to maximise the community benefits of its use.

The Council's strategic planning objectives for the land to which the plan applies are as follows:

To provide a distribution of open space and facilities that matches demand and supply as far as possible.

- 1 To provide high quality open space and facilities requiring a minimum of maintenance.
- 2 To provide public access to community land.
- 3 To provide a healthy environment on the land.
- 4 To provide a broad spectrum of safe, high quality recreational and commercial opportunities.
- 5 Maintain flexibility of future decision making and to allow changes in community preferences.
- 6 To allow for a range of uses (including temporary uses) for the land, provided Council is satisfied that the use does not significantly affect land.

PLANNING CONTROLS APPLYING

The land to which this plan applies is subject to the provisions of Wyong Local Environmental Plan 1991. Development consent under the Environmental Planning and Assessment Act 1979 may be required for development under the provisions of the Wyong Local Environmental Plan 1991.

Development Control Plan 2005 may also apply to the land.

Two masterplans also apply to part of the land:

- 1 The Entrance Town Centre Masterplan
- 2 Long Jetty Village Masterplan

PLAN OF MANAGEMENT OBJECTIVES

The general objectives of the plan are:

- 1 To ensure that the Act is complied with in relation to the preparation of plans of management.
- 2 To inform Council staff and the community of the way the land will be used and managed.
- 3 To implement the specific policies, guidelines and works identified in the plan of management.

- 4 To progressively improve the values of the land and to minimise the long term cost of maintenance to the Council.
- 5 To make provision for appropriate leases, licenses and agreements in respect of the land.
- 6 To identify and recognise existing uses and improvements on the land.
- 7 To provide a reference and data bank in relation to information relevant to the present and future management of the land.
- 8 To set in place an administrative structure to ensure the achievement of land management objectives.
- 9 To identify the major management issues applying to the land.
- 10 To simplify the process of management as far as possible.

The core objectives for management of community land categorised as a park are:

- 1 To encourage, promote and facilitate recreational, cultural, social and educational pastimes and activities.
- 2 To provide for passive recreational activities or pastimes and for the casual playing of games.
- 3 To improve the land in such a way as to promote and facilitate its use to achieve the other core objectives for its management.

The core objectives for management of community land categorised as general community use are:

- 1 To promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public:
 - In relation to public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public; and
 - In relation to purposes for which a lease, licence or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities).

SECTION 2 - MANAGEMENT GUIDELINES

ACCEPTABLE ACTIVITIES AND USES

This plan of management authorises activities, including and directly associated with the dominant use of the land, provided that Council is satisfied that the associated activities do not compromise the identified dominant use of the land.

Uses and activities not specifically authorised under this plan may be carried out where development consent has been obtained for the use or activity under the Environmental Planning and Assessment Act 1979.

MANAGEMENT POLICIES AND GUIDELINES

The management policies and guidelines applying to the land are outlined in this section of the plan. The general guidelines apply to all of the land, and specific guidelines apply for the different types of categories of land, namely parks and playgrounds, and general community use. Common general principles apply to the management of all categories of land but may not apply in all specific situations.

Some matters are subject to additional adopted policies, procedures manuals and asset management plans and these are to apply where appropriate. A list of procedures manuals and asset management plans is attached to this plan.

General management policies and issues are grouped in terms of their general subject and are as follows:

Recreation Activities

The main value of the land is for recreational purposes, both active and passive. As far as possible, a high standard of facilities will be provided to meet community needs for recreational facilities.

Buildings and Amenities

Buildings and amenities may be provided where consistent with the need to facilitate the recreational use of the land. Buildings and amenities are to be maintained to the highest possible standard.

Public Toilets and Amenities

Where appropriate, public toilets and amenities shall be provided and maintained.

Play Equipment and Recreation Equipment

Play equipment shall be constructed and maintained in accordance with the relevant Australian Standard, and may be replaced or removed as required.

Outdoor Furniture (seats, bubblers, barbecues etc.)

Outdoor furniture shall be provided as required and maintained to a safe standard.

Private Buildings

Private buildings may be constructed only where there is a lease from the Council and that lease specifically makes provision for the use or erection of a private building. Private buildings shall be fully maintained by the user.

Public Buildings

Public buildings may be constructed for any purpose ancillary to the dominant use of the land or any other activity authorised under this plan. Community facilities may also be permitted.

Removal of Buildings or Utilities

Buildings or utilities on the land may be removed by the Council where these are no longer required. The land is to be rehabilitated following removal.

Mowing

Mowing shall be regularly undertaken as required in accordance with any adopted Council procedures manual or asset management plan.

Cleaning

Buildings and amenities will be regularly cleaned and maintained in a tidy condition in accordance with any adopted Council procedures manual or asset management plan.

Reseeding or Turfing

In areas of concentrated use, reseeded or turfing may be undertaken as required.

Infrastructure

Any necessary infrastructure to service the recreational use of the land (or surrounding areas) may be constructed.

Services and Utilities

Services and utilities (such as water supply, sewerage, electricity supply, gas and telecommunications) may be constructed, maintained or repaired on the land.

Maintenance

Maintenance will match the level and type of use, and wherever possible, users will be encouraged to help. Areas held under lease, license or regular occupancy shall be maintained by the regular occupant. Existing assets on the land shall be identified and measures taken to maintain them in a satisfactory manner. The Council may make arrangements for community groups to undertake maintenance for specific facilities on the Council's behalf.

Lighting

Adequate lighting shall be provided where appropriate on the land to ensure public safety and security for buildings and amenities as far as possible.

Floodlighting

Floodlighting shall be designed and operated to minimise the glare and spillage of light to adjoining properties. Where possible, floodlighting should comply with AS2560.

Fences

Fences may be constructed and shall be in accordance with any standards or guidelines adopted by the Council. Normally, as provided for in the Dividing Fences Act, boundary fences are the responsibility of adjoining owners to construct and maintain and Council does not contribute to fencing boundaries to private land.

Signs

Signs may be erected on the land in accordance with the Council's Signs Policy and any adopted sign manual.

Access and Occupation

The plan seeks to facilitate access to the land to enable its use for recreational and other purposes.

Access

Access to the land may be limited by the Council at times where this may interfere with works or may have an adverse effect on the land.

Roads and Parking

Roads and parking areas may be constructed or reconstructed to a safe and all-weather standard. In cases where significant new road works are proposed, a master plan should be prepared for the individual parcel of land and the works constructed in accordance with that plan.

Shared Pathways

Where a shared pathway has been identified as being located on the land, the shared pathway shall be constructed and maintained in accordance with any adopted Council plans and guidelines.

Development Activities

Development activities shall be undertaken in a way that minimises disruption to the area and the degree and duration of disturbance. Areas are to be restored to the greatest extent practicable.

Construction Works

Progressive site stabilisation and restoration shall be undertaken during the construction process.

Stockpiling of Materials

Works are to be completed in stages (clearing, topsoil stripping, relocation of topsoil, mulching, planting, etc.) and shall follow the principle of isolating stockpiles of different materials to prevent contamination. Materials and soil may be stockpiled but only on a temporary basis, and provided that measures are taken to prevent adverse effects such as soil erosion, introduction of weed species, soil compaction, and the like. Stockpiles are to be more than 5 metres from trees. Sediment erosion control devices must be installed in accordance with Council's DCP.

Nutrients Leached from Building Materials

Materials (including concrete, gravel, topsoil, etc.) shall be stockpiled in such a way as to prevent nutrients from leaching into watercourses or into groundwater systems.

Protection of Trees

Trees to be protected shall be identified prior to construction and marked appropriately. Measures are to be taken to prevent damage and disturbance to tree roots by cutting of roots, loss of water, soil compaction or buildup of soil. Clearing works are to be in accordance with any additional procedures manuals or adopted policies.

New Development Works

New development works (such as construction of roads, parking areas, buildings and shared pathways etc.) may be undertaken where the works are consistent with the objectives of this plan, and where any necessary approvals have been obtained under the Environmental Planning and Assessment Act 1979 or the Local Government Act 1993.

Filling

As far as possible, no fill should be deposited on the land unless it comes from the same area of parkland and adequate measures are taken to stabilise the fill. Works are to be in accordance with any additional procedures manuals or adopted policies/DCPs.

Soil Compaction

Measures shall be taken to avoid soil compaction arising from construction works and earthworks. Any compaction will be relieved by appropriate methods which may include the use of soil aeration equipment as necessary.

Pollution Control

Management should seek to ensure that no pollution is generated on the land, and that adequate measures are taken to prevent adverse impacts from adjoining land.

Soil Erosion and Sedimentation

All activities are to ensure adequate controls to prevent soil erosion and sedimentation and are to be inspected periodically.

Nutrients

Measures shall be taken to minimise and to control nutrients entering watercourses, water bodies or groundwater.

Environment Protection (noise control, dust, chemicals, etc.)

Measures shall be taken during any construction or maintenance works on the land to ensure that normal environmental protection, pollution control and health guidelines are complied with.

Litter

Litter shall be regularly collected and removed.

Rubbish Dumping

Rubbish dumping is not permitted. Any lawn clippings or garden cuttings are to be disposed of in a manner that does not affect natural vegetation, or encourage the spread of weeds.

Irrigation

Irrigation is to be minimised on any lawns or mowed areas to avoid runoff and a raised water table.

Watercourses

Natural hydrological processes are to be maintained where possible, including natural vegetation and the flow regimes to maintain creek line stability and health of terrestrial and aquatic plant communities.

Noise from Sporting Events and Activities

Noise from sporting events and activities shall be required to comply with normal noise pollution control requirements.

Drainage (eg. requirements, detention basins)

Drainage works are allowed on the land to which this plan applies. Any works within defined watercourses are to be minimised, and are to comply with any environmental management guidelines adopted by the Council to minimise the flow of nutrients and pollutants into watercourses.

Fertilisers and Pesticides

The use of fertilisers and pesticides may be permitted on land to which this plan applies, but only where no suitable alternatives exist and an environmental assessment demonstrates that no adverse environmental impact is likely to occur. New landscape designs are to minimise the need for these.

Removal of Silt

Silt shall be removed from drains and silt traps as necessary.

Acid Sulphate Soils

Disturbance to acid sulphate soils causes degradation of lowland environments and estuarine water quality. These are soils with layers rich in iron sulphides which oxidise to sulphuric acid when these previously waterlogged soils are drained or excavated. They are generally associated with estuarine swamps and should preferably be left undisturbed.

Trees and Vegetation and Landscape

Proper management of landscaping measures, trees and vegetation is important to provide a high degree of amenity on the land.

Trees

Trees will be maintained, as will maintenance of appropriate growing conditions involving management of soil compaction and other encroachments. Trees are to be regarded as a capital asset requiring appropriate maintenance.

Weed Control

Weed control shall be by both taking preventative measures and active control measures. Prevention of weed infestation shall be by minimising actions that disturb the ground surface and discouraging the conditions which encourage weeds. Measures shall be taken to prevent the dispersion of weeds by fill or the transport of seeds on machinery. Active control measures which are acceptable include physical removal or slashing, accepted biological control techniques, bush regeneration, or chemical spraying where the Council is satisfied that there will be no adverse residual effects and no adverse effect on human health will occur.

Tree Planting and Removal

Trees may be planted, removed or replaced. In replacing trees, regard will be had to endorsed plans and any adopted policies outlining preferred species. Tree planting, maintenance, removal and replacement shall be in accordance with adopted standards, codes, manuals or policies.

Tree Protection

Appropriate protection such as guards and barriers shall generally be provided for all new plantings as may be required.

Landscape Design

Landscape design will be in accordance with any design guidelines adopted by the Council.

Gardens

Gardens may be constructed and maintained on the land.

Beaches and Foreshores

Beaches and foreshores are an important recreational resource in Wyong Shire and require careful management.

Beaches

Beaches shall be regularly inspected, and litter removed.

Lifeguards

On ocean beaches lifeguards may be provided as required.

Beach Restoration

Beach restoration may be undertaken where there has been erosion of beaches and foreshores, but shall take into account the cause of the erosion. As far as possible, any remedial actions are to provide long term solutions.

Jetties

New jetties and access to them shall only be provided in accordance with a master plan prepared and adopted by the Council.

Removal of Sea Weed

Sea weed (wrack) may be removed from beaches or foreshores in accordance with appropriate approvals.

Information, Monitoring and Research

Monitoring and collection of information relating to the land to which the plan applies are important to enable good management.

Education and Research

Where a demonstrated need has been identified, an educational programme shall be developed to encourage appropriate recreational use of all or part of the land to which this plan applies.

Monitoring

Management arrangements shall be implemented to regularly monitor the usage of the land, environmental conditions and facilities.

Surveys

Surveys of visitation and/or satisfaction with recreational facilities may be undertaken to facilitate the management and use of the land.

Administration

Administrative issues have an important influence on the way in which the land is managed.

Staff Resources

The Council shall seek to provide adequate staff resources for the management of the land in accordance with this plan. Staff shall have appropriate qualifications and/or experience.

Environmental Impact Assessment of Activities

The environmental impact of activities carried out on the land will be assessed having regard to the requirements under Part V of the Environmental Planning and Assessment Act 1979.

Role of Other Authorities (e.g. Crown Lands)

Other government authorities may have responsibilities or involvement in the management of the land or of the immediately adjacent land. This will be taken into account, and where appropriate, consultation will take place with relevant authorities.

Activities Carried Out by Other Authorities

Where activities are carried out on the land by other authorities, the Council will make such authorities aware of the provisions of this plan and as far as possible shall seek to ensure that any activities are compatible with the objectives and guidelines of this plan.

Community Involvement in Management

Where appropriate, the Council may undertake community consultation subsequent to the making of this plan and may give community groups a role in management.

Contract and Volunteer Labour

In managing the land the Council may use contract and volunteer labour but shall ensure that supervisors have appropriate qualifications and/or experience, and are made aware of the requirements of this plan.

Delegation of Management Responsibilities

Where management responsibilities are delegated by the Council a requirement of the delegation shall be that the provisions of this plan of management are complied with.

Leasing

The plan authorises the Council to lease land to which this plan applies for a purpose for which the land was being used at the date of commencement of the plan, or for any other purpose which is specifically allowed under the terms of this plan. Any leases are to be in accordance with the provisions of the Local Government Act 1993.

Easements

The Council may grant easements for the provision of services over, or on land to which this plan applies.

General Issues

Temporary Uses

The Council may allow temporary use of any of the land to which this plan applies up to a maximum continuous period of one month in any calendar year, provided it is satisfied that the use does not significantly adversely affect the permanent uses of the land and conforms to the objectives of this plan. In allowing such a temporary use, the Council will have regard to the environmental impact of the use, as provided for in the Environmental Planning and Assessment Act, 1979.

Energy Efficiency

Measures shall be taken to improve the energy efficiency of all buildings and activities carried out on the land to which this plan applies. Measures shall include use of energy efficient lighting, periodic auditing of energy use, and appropriate orientation of any new buildings to incorporate passive solar design principles.

Neighbours

The Council shall endeavour to be a good neighbour, and as far as possible shall consult with adjoining owners in respect of management activities which may affect them.

Public Liability

The Council will maintain public liability insurance for the land to which the plan applies.

Public Safety

Reasonable measures will be taken by the Council to ensure and maintain the public safety of persons using the land.

Commercial Activities (eg. selling food and drinks)

Commercial activities may be carried out on the land to which this plan applies and are subject to prior Council approval.

Emergencies

This plan authorises any necessary activities to be carried out during declared emergencies as may be decided by the General Manager. Following the carrying out of any activities, periodic monitoring will be undertaken, and rehabilitation works undertaken if necessary.

Bushfire Hazard Reduction

Where a bushfire hazard is identified on land to which this plan applies, measures shall be taken to reduce the bushfire hazard on the land.

Occupation by Adjoining Land Owners

Where the Council is aware of occupation or encroachment by private landowners onto land to which this plan applies, measures will be taken to prevent this occurring.

Land Proposed for Future Development

Land proposed by Council for future development for a specific purpose may be utilised for other purposes on an interim basis until required for that purpose.

User Charges

Subject to any provisions in the Local Government Act 1993 user charges for the use of facilities may be imposed by the Council.

Undeveloped Areas

Land to which this plan applies that is undeveloped and unused for recreational purposes may be used for any activity that does not prevent or inhibit its future recreational use, including tree planting, grazing, and mowing.

Parks and Playgrounds (Specific Guidelines)

The following specific guidelines apply only to land classified as parks and playgrounds.

Boat Ramps

Boat ramps are to be regularly inspected and maintained, and may be upgraded. New boat ramps may only be constructed where a master plan has been prepared and adopted by Council.

Camping Areas

Camping areas may be permitted and shall have adequate arrangements for sewerage and waste disposal.

Caravan Parks

Caravan parks require development consent under the Environmental Planning and Assessment Act 1979 but are generally not a suitable use of community land.

Play Equipment and Recreation Equipment

Play equipment may be installed or removed. Equipment shall be regularly maintained and kept in a safe condition in accordance with the relevant Australian Standard.

SECTION 3 - IMPLEMENTATION

HOW TO APPLY THE MANAGEMENT POLICIES AND GUIDELINES

The management policies and guidelines outlined in this plan must be taken into consideration in making decisions on management of the subject land.

ACTION PLAN

This plan specifies performance targets and priorities for actions to be taken in relation to the land to which the plan applies.

Assessment of the achievement of the objectives of the plan is to be undertaken. A summary of indicators and targets for major objectives is outlined in the table below:

Objectives and Performance Targets of the Plan with respect to the Land	Means by which the Council proposes to achieve the Plan's Objectives and Performance Targets	The Manner in which the Council proposes to assess its Performance Objectives and Performance Targets
General Objectives		
To ensure that the Act is complied with in relation to preparation of Plans of Management.	The Plan is prepared in accordance with the Act	The Plan is exhibited and adopted by Council
To inform Council staff and the community of the way the land will be managed.	The Plan is exhibited in accordance with the Act	The Plan is exhibited and adopted by Council
To progressively improve the values of the land and to minimise the long term cost of maintenance to the Council.	Carry out all works identified in various masterplans	All works are completed and minimal maintenance of the improvements is required
To make provision for leases, licences and agreements in respect of the land.	The Plan of Management authorises the provision of leases etc. where appropriate	Any leases are prepared, exhibited and adopted in accordance with the provisions of the Local Government Act
To identify and recognise existing uses and improvements on the land.	Physical inspection	The Plan is exhibited and adopted by Council
To provide a reference and data bank in relation to information relevant to present and future management of the land.	Physical inspection and file research	The Plan is exhibited and adopted by Council
To set in place an administrative structure to ensure the achievement of land management objectives.	Ensure that all sections of Council are aware of the contents of the Plan	All future works are carried out in accordance with the Plan
To identify the major management issues applying to the land.	Consultation and staff discussions	The Plan is exhibited and adopted by Council
To simplify the process of management as far as possible.	Preparation of the Plan in accordance with the Act	The Plan is exhibited and adopted by Council

Objectives and Performance Targets of the Plan with respect to the Land	Means by which the Council proposes to achieve the Plan's Objectives and Performance Targets	the Manner in which the Council proposes to assess its Performance with respect to the Plan's Objectives and Performance Targets
Park Objectives		
To encourage, promote and facilitate recreational, cultural, social and educational past times and activities	Development of the reserves in accordance with the various masterplans.	All works are completed and minimal negative feedback is received
To provide for passive recreational activities or past times and for the casual playing of games	Development of the reserves in accordance with the various masterplans.	All works are completed and minimal negative feedback is received
To improve the land in such a way as to promote and facilitate its use to achieve the other core objectives for its management.	Development of the reserves in accordance with the various masterplans.	All works are completed and minimal negative feedback is received
General Community Use Objectives		
<p>To promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public:</p> <p>In relation to public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public; and</p> <p>In relation to purposes for which a lease, licence or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities).</p>	Development of the reserves in accordance with the various masterplans.	All works are completed and minimal negative feedback is received

REVIEW OF PLAN

The plan may be reviewed, if required, and the updated plan will be adopted by the Council.

REFERENCES

List of Open Space and Recreation Procedures Manuals

- OS&R 001 Reserves Cleaning and Litter Collection
- OS&R 002 Amenities Cleaning
- OS&R 003 Roadside and Reserves Mowing
- OS&R 004 Turf Ovals Mowing and Maintenance
- OS&R 005 Boom Mowing
- OS&R 006 Parks Maintenance
- OS&R 007 Wyong Road Landscape Maintenance
- OS&R 008 Foreshore Maintenance and Beach Cleaning

ATTACHMENTS

Schedule 1 - Land to which this plan applies

Land	Lot/DP, Address	Area	Property ID	Reserve No.	Owner	Property Type	Category	Plan of Management or Management Plan
61W Curtis Parade, The Entrance North	Lot 74 DP 227174	5,671.9m ²	303858	n/a	Wyong Shire Council; Dedicated from plan of subdivision for Ocean Lake Estate; Acquired 3/11/1965	Council Community	General Community Use	Plan of Management No 16
9W Terilbah Place, The Entrance North	Lot 22 DP 881850	6,460m ²	353760	n/a	Wyong Shire Council; Transfer date 9/12/1998	Council Community	General Community Use	Plan of Management No 16
48W Curtis Parade, The Entrance North	Lot 73 DP 227174	480.6m ²	303859	n/a	Wyong Shire Council; Dedicated from plan of subdivision for Ocean Lake Estate; Acquired 30/6/1965; Contains easement for electricity supply	Council Community	General Community Use	Plan of Management No 16
11 Simpson Street, The Entrance North	Lot 32 DP 26265	1169.8m ²	326184	n/a	Wyong Shire Council; Created with subdivision as Public Garden and Recreation Space 1955; Certificate of Title registered Council 7/9/1956	Council Community	General Community Use	Plan of Management No 16

Land	Lot/DP, Address	Area	Property ID	Reserve No.	Owner	Property Type	Category	Plan of Management or Management Plan
44W Hutton Road, The Entrance North	Lot 2 DP 532287	619.6m ²	349933		Wyong Shire Council; Certificates of Title recorded 25/3/1969; Open Space	Council Community	General Community Use	Plan of Management No 16
	Lot 47 DP 437839	904.2m ²						
	Lot 48 DP 437839	815.7m ²						
	Lot 49 DP 437839	733.5m ²						
	Lot 50 DP 437839	904.2m ²						
	Lot 51 DP 437839	727.2m ²						
	Lot 52 DP 437839	695.5m ²						
	Lot 53 DP 437839	657.6m ²						
	Lot 55 DP 437839	588.06						
	Lot 56 DP 437839	556.45m ²						
	Lot 57 DP 437839	5,18.51m ²						
	Lot 58 DP 437839	4,86.89m ²						
44 Hutton Road, The Entrance North	Lot 1 DP 533386	1682m ²	311385	n/a	Wyong Shire Council; Resumed for Public Reserve in 1968	Council Community	Park	Plan of Management No 16
Extension to Salt Water Creek Reserve, 17W Wyong Road, Long Jetty	Lot 47 DP 217941	6,127m ²	339016	n/a	Wyong Shire Council; noted on plan of subdivision (1963) as Public Garden and Recreation Space and Site of Proposed Drainage Easement	Council Community	General Community Use	Plan of Management No 16
Lions Park	Lot 1 DP 364630	20,800m ²	329070	n/a	Wyong Shire Council; Acquired via dedication from Bloomfields subdivision July 1949 (?)	Council Community	Park	Plan of Management No 16

Land	Lot/DP, Address	Area	Property ID	Reserve No.	Owner	Property Type	Category	Plan of Management or Management Plan
1W Bonnieview Street, Long Jetty	Lot 123 DP 239509 Lot 122 DP 239509	1,540m ² 1,270.9m ²	299534	n/a	Wyong Shire Council; Lot 123 Drainage Reserve; Both Lots acquired November 1970	Council Community	General Community Use	Plan of Management No 16
113 Swadling Street, Toowoona Bay	Lot 369 DP 755263	2087m ²	344995	R87085 For Public Hall; Gazette date 28/2/1969	Wyong Shire Council; WSC appointed Trustees 13/6/1969; Vested in WSC as owner 17/6/1977	Council Community	General Community Use	Plan of Management No 16



**MANAGEMENT PLAN OF CROWN LAND FORESHORE
RESERVES AT THE ENTRANCE NORTH, THE ENTRANCE,
BLUE BAY, TOOWOON BAY, SHELLY BEACH AND
BATEAU BAY**

Note: This Plan should be read in conjunction with Plan of Management No.16 for Council owned foreshore land at The Entrance North, The Entrance, Blue Bay, Toowoon Bay, Shelly Beach and Bateau Bay.

WYONG SHIRE COUNCIL

Date of Adoption: ____/____/____

EXECUTIVE SUMMARY

A Management Plan for Parks and Reserves is an important document as it provides effective directions for the routine maintenance, future use and development of the land in response to the needs and values of the local communities and users.

Wyong Shire Council has prepared this Management Plan (and Plan of Management No 16) to reinforce and conserve the reserves' values and define better and broader usage of the reserves by the Council, community and tourists. This plan covers several parks and reserves along Tuggerah Lakes, from North Entrance to Long Jetty and oceanfront reserves from The Entrance to Bateau Bay.

This Management Plan has reviewed the existing Plan for the Memorial Park and North Entrance Reserve and has included other surrounding areas, seeking to establish a variety of flexible uses for these parks and reserves, transforming these areas into active areas for the wider community and to allow for commercial activities capable of generating income and employment opportunities.

The reason for including this extensive area within a single document is the fact that the reserves are interrelated in location and general uses, as they begin where the preceding area ends, all of them are located within the same regional area and are accessed by the same primary roads and shared pathways

When adopted by Council and Crown Lands, this Management Plan will replace the current Plan of Management for Memorial Park and North Entrance Reserve and will also be adopted for the remaining above mentioned areas. Whilst this Management Plan specifically covers Crown Reserves within this area, the Plan should be read in conjunction with Plan of Management no. 16 for Council owned land in the same area as it is intended that both Plans complement each other and similar uses and activities apply.

The Plan will result in clear and achievable management strategies that reflect the expectations of Wyong Shire Council as a Trustee for these lands and also the community's expectations.

Specific objectives of this Plan are:

- To prepare a practical and progressive Management Plan that provides a general planning framework for the improvement, maintenance and use of the reserves within the study area.
- To identify potential opportunities for future development of the reserve based on Council and the community's priorities.
- To identify all current leases and licenses in place for any of the covered areas and state what they are and life expectancy, if any.
- To give authority to Council to enter into leases and licenses for any of the covered areas.
- To identify guidelines for future management of the parks and reserves based on current and future technologies and approaches identified at any time by community consultation and practices.
- To satisfy the objectives of the Crown Lands Act 1989.
- To align with the adopted Masterplan for The Entrance Town Centre.
- To align with the recommendations and actions identified in the draft Long Jetty Centre Improvement Masterplan.

The Management Plan recommends that actions are to be revised regularly to meet current and future demands of users and these actions intend to improve the quality of the areas according to the community needs and to reiterate these areas values and to establish management objectives.

LOCATIONS AND CONTEXT

The land covered by this Plan is located within the suburbs of The Entrance North, The Entrance, Long Jetty, Blue Bay, Toowoan Bay, Shelly Beach and Bateau Bay. This area is a well-known destination for holiday purposes and weekend visitors.

Below is a summary of some of the major parks and reserves covered by this Plan and a description of current activities taking place on these areas. Please see Figure 1.1.

Memorial Park is a local foreshore open space area within The Entrance Town Centre and is approximately 1.85 hectares in size bounded to the north-east by The Entrance Channel, to the west by The Entrance Road, and to the south by Coral Street. The park features and land uses are a central grassed area, Pelican Plaza, Children's playground, Barbecue area, Foreshore walkway, War Memorial, Town Centre Office/Visitor Information Centre, and a Stage area for Community events.

North Entrance Reserve is located at the south eastern foreshore of Tuggerah Lake at North Entrance with linear open space of 5.4 hectares in size and bounded to the south and west by Terilbah Channel. The north and eastern boundaries are formed by Wilfred Barrett Drive and predominantly by residential development.

Picnic Point Reserve covers a large parcel of the foreshore area fronting part of Tuggerah Parade and The Entrance Road at The Entrance with total land size of 17.72 hectares. This open space area accommodates the following activities of skate park, picnicking, fishing, walking and cycling paths, informal recreation and social activities, boat and watercraft launching area and Car and boat trailer parking.

Tuggerah Lake Reserve is a large stretch of land bounded by Picnic Point at north, westerly by Tuggerah Lake, southerly by Saltwater Creek Reserve and mainly by low scale residential development to the east. This open space area facilitates activities such as walking and cycling, picnicking, children's playground with toilet facilities, jetties and previously a Sailing Club was also located in the reserve but the building was destroyed by fire in 2012.

Saltwater Creek Reserve is surrounded by residential low scale development on the south, west and eastern boundaries and retail/industrial to the north. The area is largely utilised by the local community for its playground and toilet facilities. Also cycling and other recreational activities are present in the reserve. Both areas have substantial parking spaces. Saltwater Creek and Lions Park are segmented by the Central Coast Highway and function as 2 separated areas.

LAND OWNERSHIP

The land covered by this Plan is Crown Reserve managed by Wyong Shire Reserve Trust pursuant to the Section 112 of The Crown Lands Act of 1989. Schedule 1 attached to this Plan provides details of the ownership of the various parcels of land that comprise this Plan.

Figure 1



Figure 2

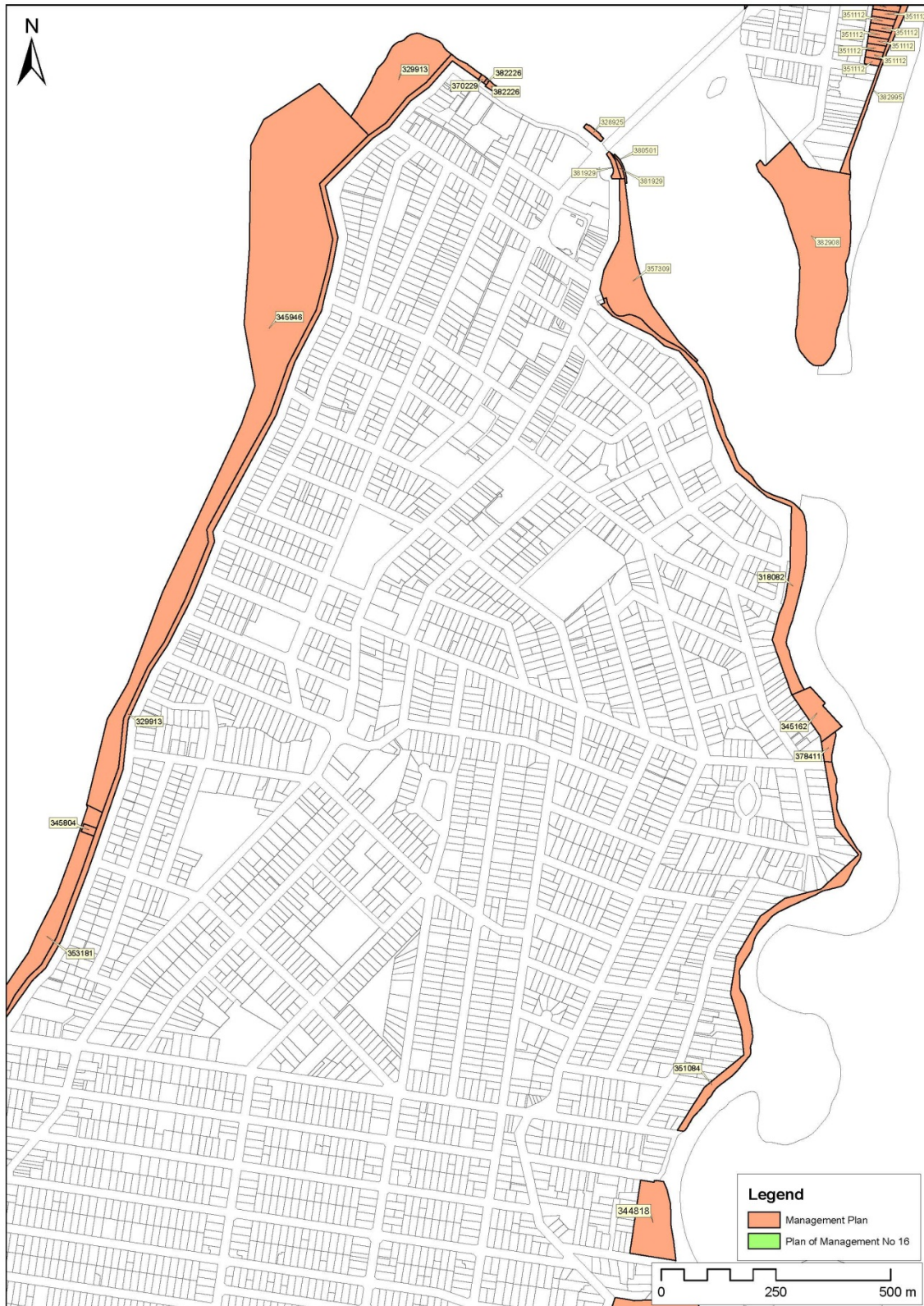
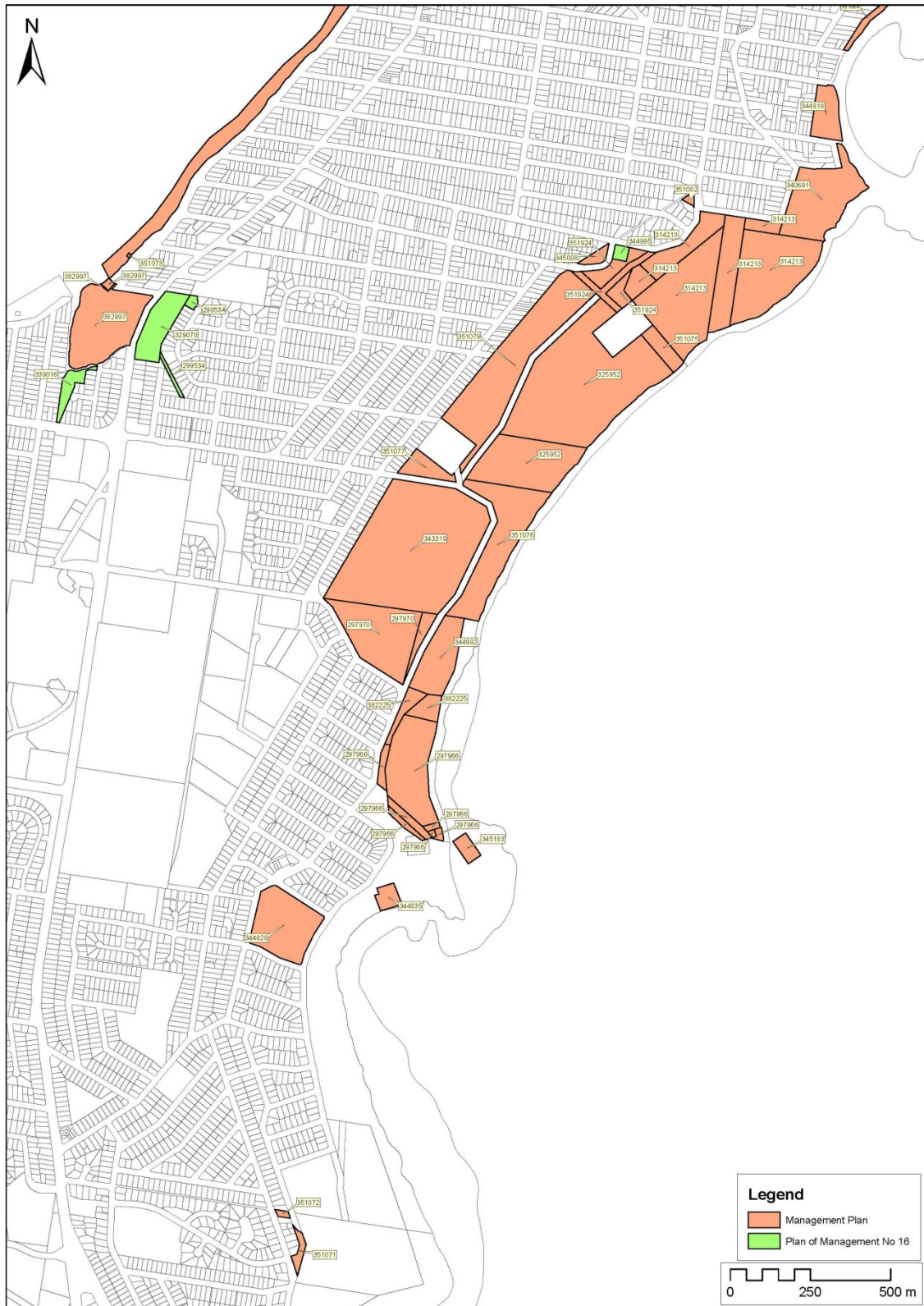


Figure 3



1. Maintenance of Parks/Reserves

Wyong Shire Council has routine maintenance tasks scheduled for the parks and reserves as follows:

- Removal of rubbish
- Turf maintenance (mowing, edging, trimming, herbicide application, cleaning of paths and drains)
- Inspecting and repairing playground equipment and soft fall areas
- Cleaning toilets
- Inspecting, repairing and replacing fixtures and furniture
- Gardening and tree maintenance (weeding, pruning, herbicide application, removal of dead plants or parts of plants)
- Bushcare
- Car parking and general paved areas sweeping, inspection and repair
- Repair of built structures such as amenities, barbecue areas, boat ramps, lights, water features
- Cleaning of water features
- Signage repair, upgrade and replacement.

This Plan does not intend to create a maintenance regime for all activities taking place on a reserve. All maintenance activities are detailed by Council in the relevant Asset Management Plan.

2. Use of the Park and Reserves

Parks and reserves are destinations areas for local residents and tourists where diverse activities occur at different times of the day and of the year.

Some of the activities that occur in the areas covered by this Plan are as follows:

- Use of playgrounds and water features
- Walking/exercising
- Cycling
- Walking through natural parkland
- Picnic/barbecue
- Fishing
- Enjoying family and friends time together
- Enjoying water views
- Dog walking
- Boat launching/kayaking/canoeing
- Organised events (markets, festivals, carnival, dining)

These are some of the current activities in these areas but consultation with the community, stakeholders, observation of local strategies/studies such as masterplans have also identified a desire to see a broader range of activities occur in these areas.

This Plan intends to express the importance of working with current, proposed and future documents that evaluate the uses in those areas according to the community's and general users' needs.

3. Relevant Legislation that applies to this Plan

The Crown Lands Act 1989 (the Act) governs the planning, management and use of Crown land, including reservation or dedication for a range of public purposes, and leasing and licensing.

The New South Wales Department of Lands appointed Wyong Shire Council as a Trust Manager for these areas.

Wyong Shire Council in its role of Trust Manager has functions under the Act to be responsible for the care, management and control of the reserves consistent with the public purpose of Public Recreation.

The Department of Lands encourages the community to be directly involved and consulted in the planning and management of these Reserves.

In terms of local planning context, Wyong Council's framework guides that should be consulted are:

- Wyong Shire Council Management Plan 2014-2017
- Wyong Shire Council Local Environmental Plan 1991
- Wyong Shire Council draft Local Environmental Plan 2012
- Plan of Management no 16. for Council owned foreshore land at The Entrance North, The Entrance, Blue Bay, Toowoong Bay, Shelly Beach and Bateau Bay
- Tuggerah Lakes Estuary Management Plan adopted The Entrance Town Centre Masterplan
- Draft Long Jetty Masterplan
- Council Policies and Procedures
- Recreation Strategy
- Playgrounds Strategy
- Draft Economic Development Strategy

4. Licenses and Leases

A license is required when exclusive use or control of all or part of any reserve/park is desirable for a specific management task. A license may also be required due to the scale of investment in facilities. Licenses can allow for multiple and non-exclusive use of an area. Licenses can be established by the Council for private or public purposes, as long as they are consistent with the objectives identified by existing documents and consultation with local community and stakeholders.

All leases and licenses are subject to authorisation determined by the Act if Council is the Trust Manager for that specific land.

This Plan authorises Council to procure the following types of agreements:

- Council may enter into and/or authorise leases and/or licences and/or other rights to third parties.
- Council may choose to allow leasing for community purposes, business purposes, or more limited purposes such as festivals or events.

4.1 Tendering for Leases, Licences and Other Estates

Leases, licences and other rights granted for the purposes of providing or enhancing public enjoyment of the land will be granted only after a process in accordance with the Local Government Act 1993.

4.2 Approvals for Activities on the Land

Section 68, Part D, of the Act requires approvals issued by Council for certain activities on community land. Councils Local Environmental Plan (1991) and Draft Local Environmental Plan 2012 list the permissible uses on the land.

5. Future Use of the Land

Council has been effectively engaging and consulting with the local community since November 2011 when the preparation of The Entrance Town Centre Masterplan was initiated. This has been a very successful process where the local community and stakeholders made decisions to improve the characteristics that make the locality a huge tourist attraction.

This community engagement activity was further embellished through the preparation of the masterplan for Long Jetty. The Entrance Town Centre Masterplan was adopted by Council in 2012 and this document provides direction in scheduling of works to be undertaken regarding maintenance, repairs and a new design for the Memorial Park. This redesign of the Park will ensure that the open space is utilised in a more progressive way, redefine location for current activities and will allow for possible future leases and licenses within the Park's boundary.

Council is also currently working with the community and public and private stakeholders on the preparation a masterplan document for Long Jetty, more specifically for Saltwater Creek Reserve and Tuggerah Lakes Reserve. The current proposed draft document for this area foresees possible future activities in this locality that could provide socio-economic benefits to Council and local community.

In this regard, Council proposes to encourage use of the land (including those lands not included in the masterplan areas) pursuant to the masterplan which will provide enhancement to public use of any land for passive and active recreation forms.

6. Review Procedures

These areas require a management structure that will inevitably be a dynamic process. Such active processes require flexibility to accommodate changed circumstances, including people's preferences and financial requirements.

Therefore this Management Plan should be subject to regular review, to ensure its objectives and strategies remain relevant to the management issues that must be addressed.

In this regard, it is proposed that this Plan be reviewed on a biennial basis and if Council deems necessary, a revised Management Plan will be prepared, exhibited for public comment and adopted.

Land	Lot/DP, Address	Area	Property ID	Reserve No.	Owner	Property Type
Terilbah Reserve (North Entrance Reserve), 3CR Wilfred Barrett Drive, The Entrance North	Lot 627 DP 48614	53,790m ²	351278	R1002834 For Public Recreation; Gazetted 14/1/2000	Tuggerah Lake (The Entrance North) Recreation (R1002834) Reserve Trust; WSC Trust Managers	Standard
The Entrance North Foreshore Reserve, 7CR Wilfred Barrett Drive, The Entrance North (that section of the Reserve at Simpson Street is known as Matron Simpson Reserve)	Lot 7090 DP 1122057	40,000m ² (approx.)	333114	R50515 For Public Recreation and Access; Gazetted 10/2/1915; Lease held by Volunteer Marine Rescue on Lot 7090 expires 28/2/2016	The Entrance North Recreation (R50515) Reserve Trust; WSC Trust Manager 23/11/1990	Council Care/Control
Walter & Edith Denniss Park, 42 Hutton Road, The Entrance North	Lot 7098 DP 1074937	6,441m ²	333117			Standard
Pelican Wharf, 2 Lions Garden Drive, The Entrance North	Lot 636 DP 1009375	772.9m ²	351282			Standard
Terilbah Reserve, 1CR Wilfred Barrett Drive, The Entrance North	Lot 7335 DP 1147395	90m ²	382840			Standard
Terilbah Reserve, 5CR Wilfred Barrett Drive, The Entrance North	Lot 7334 DP 1147395	3,007m ²	382841			Standard
7CR Wilfred Barrett Drive, The Entrance North	Lot 7091 DP 1122057	1,033m ²	383985			Standard
69CR Bondi Road, The Entrance North	Lot 7322 DP 1147449	127,000m ²	382839	R87452 For Public Recreation and Protection from Sand Drift & Coastal Environmental Protection; Gazetted 10/10/1969	Crown Land WSC; Management devolved to Council; Purpose amended 18/2/2011 to include Coastal Environmental Protection	Standard
26 Hargraves Street, The Entrance North	Lots 1-10 DP 13692	7,328m ²	351112	Added to R87452 18/2/2011	Crown Land WSC	

Land	Lot/DP, Address	Area	Property ID	Reserve No.	Owner	Property Type
Surf Club Carpark	Lot 536 DP 42567	1,826m ²	357674	R94734 For Public Recreation and Parking; gazetted 8/5/1981	Crown Land WSC; Devolved to WSC (no date)	Standard
Karagi Park, 1CR Hutton Road, The Entrance North	Lot 7313 DP 1147369	5.298ha	382908	R45877 For Public Recreation and Access; Gazetted 12/10/1910 - Additional land added to Lot 7313 16/1/1970	The Entrance Recreation (R45877) Reserve Trust; WSC appointed Manager of the Trust 23/11/1990	Standard
25CR Hargraves Street, The Entrance North	Lot 7314 DP 1147369	3,618m ² (approx.)	382995	R755266	Crown Land NSW; No Trust	Standard
North Entrance Surf Club	Lot 626 DP 822121 LI 80/2	1,352m ²	345950 345950	Crown land occupancies	North Entrance Surf Life Saving Club; Special Lease 1980/2 commenced 29/7/1982	Standard
Terilbah Reserve, 1CR Wilfred Barrett Drive, The Entrance North	Lot 7336 DP 1147395	396m ²	383984	R33175 For Access; Gazetted 31/8/1901	Buff Point Access (R33175) Reserve Trust; WSC Trust Manager	Standard
12CR Wyuna Avenue, The Entrance North	Lot 8006 DP 755266		351281		Crown Land NSW; no legal plan for this property - Lot 8006 is Council identifier only	
63W Bondi Road, The Entrance North	Lot 608 DP 840093	27.1m ²	349894		Crown Land NSW; DP 840093 is plan of acquisition of Lots 608 & 609 - June 1994	Standard
67B Bondi Road, The Entrance North	Lot 609 DP 840093	36.3m ²	349895		Crown Land NSW; DP 840093 is plan of acquisition of Lots 608 & 609 - June 1994	Standard
65CR Bondi Road, The Entrance North	Lot 636 DP 823727	3.9m ²	347915		Crown Land NSW; Created from further subdivision of Lot 611 DP 840093 and Crown Land July 1994 (see also Lots 608 & 609 above)	Standard

Land	Lot/DP, Address	Area	Property ID	Reserve No.	Owner	Property Type
Memorial Park	Lot 7040 DP 1030784	18,210m ²	357309	71875 For Public Recreation; Gazetted 5/4/1946	The Entrance Memorial Park Reserve Trust; WSC Trust Manager; Appointed 8/3/1991	Standard
The Entrance Foreshore Park	Lot 7035 DP 1074341; 42 Marine Parade, The Entrance	112m ²	318082	R50058 For Public Recreation; Gazetted 8/7/1914	The Entrance Recreation (R50058) Reserve Trust; (Part Lot leased to The Entrance Surf Life Saving Inc. to June 2022, by Council as Reserve Trust Manager); Tim Farrell Lookout is located on this Reserve (gazette 30/10/1998); WSC named Trust Manager 23/11/1990	Standard
The Entrance Ocean Baths	Lot 366 DP 755263 LI 366632; Crown land occupancy on land below high water mark is for purpose of pipeline	546.3m ² 50.6 m ²	345162	R50058 For Public Recreation	The Entrance Recreation (R50058) Reserve Trust - Gazetted 8/7/1914; WSC appointed Trust Manager 23/11/1990; Crown land occupancy consented 12/1/2007	Standard
Reserve	Lot 7035 DP 1074950; 60 Boondilla Road, The Entrance	1,233m ² (approx.)	378411	R50058 For Public Recreation	The Entrance Recreation (R50058) Reserve Trust - gazetted 8/7/1914; WSC appointed Trust Manager 23/11/1990	Standard

Land	Lot/DP, Address	Area	Property ID	Reserve No.	Owner	Property Type
Picnic Point Reserve	Lot 7042 DP 1123969 Lot 7041 DP 1030785 LI407539; Crown land occupancy is licence to WSC for access ramp, jetty, pontoon, ramp, seawall attached to Lot 7041, being on Crown land below high water mark adjoining Lot 7041	Total 48,783.1m ²	329913	R85574 For public recreation; Gazetted 10/12/1965; Lot 7042 added 26/4/1974	Long Jetty Recreation (R85574) Reserve Trust; Crown Land Occupancy 407539 - Consented 5/12/2008 - 20 year term; WSC named Trust Manager 23/11/1990	Standard
Reclaimed Land/ Tuggerah Lakes Reserve, 290CR Tuggerah Parade, The Entrance	Lot 522 DP 822129	151,900m ²	345946	R170146 For public recreation; Gazetted 2/10/1992	Tuggerah Lake (R170146) Public Recreation Reserve Trust; WSC appointed Trust Manager 2/10/1992	Standard
Long Jetty Foreshore Reserve and The Long Jetty, 210CR Tuggerah Parade, The Entrance	Lot 537 DP 823164 LI 391956; Licence for Jetty for period of 20 years commencing 25/7/2008	66,170m ²	353181	R170146; Lot 537 DP 823164 added 11/12/1998 Crown Land Occupancy	Tuggerah Lake (R170146) Public Recreation Reserve Trust; WSC appointed Trust Manager 2/10/1992	Standard

Land	Lot/DP, Address	Area	Property ID	Reserve No.	Owner	Property Type
Boat House	Lot 395 DP 39469 LI 308396 - Licence for berthing area, jetty & piles granted on 1/4/2003 LI 313600 - 20 year lease for commercial boatshed, boat hire, boat repairs, chandlery & kiosk, expires 31/3/2023	1,614.7m ²	328925	Crown land occupancies	The Entrance Boathouse Pty Ltd	Standard
2 The Entrance Road, The Entrance	Lot 150 DP 1078873 LI 321136 - For berthing area, concrete ramp, jetty & sliprails; granted 7/7/2003	143m ²	370229	Crown land occupancy	Department of Primary Industries NSW - Gosford (Fisheries)	Standard
4 The Entrance Road, The Entrance	Lot 171 DP 755263 Lot 287 DP 755263	287m ²	382226	R69381 For Public Recreation & Resting Place - Gazetted 19/7/1940; R71557 For Public Recreation & Resting Place - Gazetted 29/6/1945	The Entrance Recreation (R69381) Reserve Trust - WSC appointed Trust Manager 23/11/1990; The Entrance Recreation (R71557) Reserve Trust (Lot 171) - WSC appointed Trust Manager	Standard

Land	Lot/DP, Address	Area	Property ID	Reserve No.	Owner	Property Type
Fisherman's Wharf Boardwalk, 12W The Entrance Road, The Entrance	Lot 1 DP 1012476; Lot 101 DP 1046474 is Crown Land leased to WSC 324429 expires 31/12/2033; Lot 102 DP 1046474 - Crown Land is below HWM; LI 328615 - Licence consented to 20/3/2004	279m ²	380501 381040	 Crown Land Occupancy over Lot 102	Azzuro Blu Wharf - Wyong Shire Council owns Lot 1; Lots 101 & 102 are Crown Land; WSC has leases over Lots 101 & 102	Standard
Old Sailing Club Site	Lot 516 DP 822157	552m ²	345804	Original licence held by Sailing Club, then Volunteer Coast Guard Assoc; Licence 394926 Terminated 5/3/2008	Crown Land NSW	Standard
Scout Hall, 220 Tuggerah Parade, Long Jetty	Lot 7043 DP 1021281	136m ² (approx.)	351073	R88608 For Boy Scouts; Gazetted 2/6/1972	Scouts Assoc of Australia - 2nd Tuggerah Lakes Sea; No Trust appointed	Standard

Land	Lot/DP, Address	Area	Property ID	Reserve No.	Owner	Property Type
Saltwater Creek Reserve	Lot 453 DP 40809 Lot 362 DP 755263 Lot 7314 DP 1146521 LI 407361; Crown land occupancy attached to Lot 362 and Lot 453 - licence to WSC for bridge, pontoon and ramp	Total 4.32ha	382997	R84059 For public recreation; Gazetted 16/11/1962; Lot 362 and Lot 453 added 21/11/2008 (formerly R92238 For Future Public Requirements (Gazetted 24/4/1980) and R93654 For Future Public Requirements (Gazetted 26/9/1980)	Long Jetty Recreation (R84059) Reserve Trust; WSC appointed Trust Manager 23/11/1990; Crown Land Occupancy Consented to 5/12/2008	Standard
Saltwater Creek Footbridge	LI 81/40 (PO 142301) Saltwater Creek Footbridge	152m ²	329911	Crown land occupancy	Crown Land WSC; commencement date 1981	Standard
1 Blue Street, Blue Bay	Lot 7034 DP 1074951	not available	351084	R50058 For Public Recreation	The Entrance Recreation (R50058) Reserve Trust; WSC named Reserve Trust Manager 23/11/1990	Standard
89CR Oaks Avenue, Toowoon Bay	Lot 275 DP 755263	16,546.4m ² (approx.)	344994	R73287 For Public Recreation, Protection of Sand Drift and Preservation of Native Flora; Gazetted 16/9/1949	Toowoon Bay Recreation & Flora (R82272) Reserve Trust and Shelly Beach Recreation & Flora (R73287) Reserve Trust	Standard
91CR Oaks Avenue, Shelly Beach 115 Swadling Street, Toowoon Bay Toowoon Bay Holiday Park	Lot 7033 DP 1030598 Lots 7316-7318 DP 1153490 Lots 316, 288, 293 & 277 DP 755263;	7,410.4m ² (approx.) 18,881m ² (approx.) not available	351075 351924 314213	R82272 For Public Recreation & Preservation of Native Flora; Gazetted 15/1/1960 including Lots 277, 288 & 316 DP	Toowoon Bay Recreation & Flora (R82272) Reserve Trust; WSC named Trust Manager 23/11/1990	Standard

Land	Lot/DP, Address	Area	Property ID	Reserve No.	Owner	Property Type
	Lot 7014 DP 1030787; Lot 7315 DP 1153490			755263 - Amended 25/10/1974 to include Part Lot 275 DP 755263 Lots 7315, 7316, 7318 DP 1153490 Lot 7033 DP 1030598 & Lot 7014 1030787 - amended to include Lot 7317 DP 1153490 26/7/1974		
Swadling Park, 160 Bay Road, Toowoon Bay	Lot 197 DP 755263	44900m ²	340691	R55566 For Public Recreation; Gazetted 28/2/1922	Toowoon Bay Recreation (R55566) Reserve Trust; WSC appointed Trust Manager	Standard
Kim's Camp, 23 Binburra Avenue, Toowoon Bay	Lot 484 DP 705457 LI 192948	13690m ²	344818	R76321 Crown Land Occupancy	Kim's Camp Pty Ltd	Standard
65CR Alfred Street, Long Jetty	Lot 7015 DP 1030787	876m ²	351082	R98123 For Public Recreation; Gazetted 27/3/1986; Land to be retained as open space reserve	Toowoon Bay Recreation (R98123) Reserve Trust; Council appointed Trust Manager 23/11/1990	Standard
10CR Bateau Bay Road.	Lot 7313 DP 1149907	not available	382983	R1011268 For the public purpose of future public requirements - Gazetted 3/2/2006; R56146 Reserve from sale or lease generally - Gazetted 11/5/1923	Crown Land NSW; No Trust appointed in WSC for either Reserve	Standard
53CR Reserve Drive, Bateau Bay	Lot 247 DP 755263	4,843m ²	344835	R87856 For Future Public Requirements; Gazetted 17/7/1970	Crown Land NSW; No Trust appointed	Standard

Land	Lot/DP, Address	Area	Property ID	Reserve No.	Owner	Property Type
55CR Reserve Drive, Bateau Bay	Lot 295 DP 755263	4,007m ² (approx.)	345183	n/a	Crown Land NSW	Standard
Sutton Reserve, 7CR Parkside Avenue, Bateau Bay	Lot 7009 DP 1029438	35,856m ² (approx.)	344828	R76533 For Public Recreation; Gazetted 29/1/1954	Crown Land WSC; Management devolved to WSC	Standard
77CR Hilltop Street, Bateau Bay	Lot 7005 DP 1023224	2924m ² (approx.)	351071	R78618 For Public Recreation and Preservation of Native Flora; Gazetted 1/6/1956	Bateau Bay Recreation & Flora (R78618) Reserve Trust; WSC Trust Manager appointed 23/11/1990	Standard
63CR Hilltop Street, Bateau Bay	Lot 7006 DP 1023224	823.36m ² (approx.)	351072	R78618 For Public Recreation and Preservation of Native Flora; Gazetted 1/6/1956	Bateau Bay Recreation & Flora (R78618) Reserve Trust; WSC Trust Manager appointed 23/11/1990	Standard
Blue Lagoon Beach Resort, 10 Bateau Bay Road, Bateau Bay	Lots 292, 340 & 390 DP 755263; Lots 1 & 2 DP 722368	52,381m ²	297966	R92165	Crown Land NSW; Leased to Kelvest with Special Lease 1977/5 with conditions as per Government Gazette 4/11/1977 - to expire 30/6/2018	Standard
8CR Bateau Bay Road, Bateau Bay	Lots 378 DP 755263	1,0974m ² (Lot 389 is 5,789m ²)	382225	R82749 For public recreation; gazetted 12/8/1960	Bateau Bay Recreation (R82749) Reserve Trust (These two Lots combined for ratings purposes, but part of separate Reserves) Management	Standard

Land	Lot/DP, Address	Area	Property ID	Reserve No.	Owner	Property Type
	Lot 389 DP 755263			R91241 For public recreation; Gazetted 1/9/1978; Reserve adjoining Blue Lagoon Beach Resort	devolved to WSC 23/11/1990. WSC has care control & management of R91241 - a Deed of Agreement exists between Council and Kelvest Pty Ltd (see above), dated 15/11/1991, for the carrying out of certain improvements works and maintenance on R82749 and R91241	
100 Shelly Beach Road (Part Naomi Honey Reserve)	Lot 392 DP 257306	23930m ²	344992	R82749 For Public Recreation; Gazetted 12/8/1960	Bateau Bay Recreation (R82749) Reserve Trust; WSC appointed Trust Manager 23/11/1990	Standard
Sun Valley Tourist Park, 2 Bateau Bay Road, Shelly Beach	Lot 338 DP 755263 Lot 391 DP 257306 LI 83/4	Not available	297970	R78212 Crown Land Occupancy	Kelvest Pty Ltd	Standard
Naomi Honey Reserve, 92 Shelly Beach Road, Shelly Beach	Lot 7013 DP 1021282	not available	351076	R73287 For Public Recreation, Protection of Sand Drift and Preservation of Native Flora; Gazetted 16/9/1949; Part of Reserve leased to Tuggerah Lakes Golf Club; Part of Lot 7012 leased to Shelly Beach Surf Life Saving Club; 5 year sublease for Kiosk expires 2016	Shelly Beach Recreation & Flora (R73287) Reserve Trust; Gazetted 4/11/1949; WSC appointed Trust Manager 23/11/1990	Standard
Shelly Beach Golf Course, 84 Shelly Beach Road, Shelly Beach	Lot 7011 DP 1021282	not available	351077			
Shelly Beach Golf Course, 90 Shelly Beach Road, Shelly Beach	Lot 193 DP 755263; Lot 7045 DP 1032879	42.8ha	325952			
Shelly Beach Golf Course, 87CR Oaks Avenue, Shelly Beach Road, Shelly Beach	Lot 7046 DP 1032880	not available	351079			
Surf Club, 75 Shelly Beach Road, Shelly Beach	Lot 7012 DP 1021282	not available	343319			
Shelly Beach Golf Course, 88 Shelly Beach Road, Shelly Beach	Lot 8023 DP 755263	not available	351078			

Land	Lot/DP, Address	Area	Property ID	Reserve No.	Owner	Property Type
114CR Oaks Avenue, Shelly Beach	Lot 7044 DP 1032878	2,428m ²	345008	R85926 For children's playground; gazetted 2/9/1966	Crown Land NSW; No Trust appointed	Standard

Project Approval

Section 75J of the *Environmental Planning & Assessment Act 1979*

Under delegation of the Minister for Planning and Infrastructure executed on 14 September 2011, the Planning Assessment Commission determines to give approval to the project application referred to in Schedule 1, pursuant to section 75J of the *Environmental Planning and Assessment Act 1979*, subject to the conditions referred to in Schedule 2 and the proponent's Statement of Commitments in Schedule 3.

These conditions are required to:

- prevent, minimise, and/or offset adverse environmental impacts;
- set standards and performance measures for acceptable environmental performance; and
- provide for the ongoing environmental management of the project.



Member of the Commission



Member of the Commission

Sydney

12 September 2013

Woolworths Retail Facility, Warnervale Town Centre
MP 10_0195

Recommended Conditions of Approval

SCHEDULE 1

PART A – PROJECT

Application made by:	Fabcot Pty Ltd
Application made to:	Minister for Planning and Infrastructure
Major Project Number:	10_0195
On land comprising:	Lot 521 DP 594725
Local Government Area	Wyong Shire Council
For the carrying out of:	Retail Facility and associated works
Capital Investment Value	\$116,370,000
Type of development:	Project approval under Part 3A of the EP&A Act (transitional Part 3A)
Determination made on:	12 September 2013
Determination:	Project approval is granted subject to the conditions in the attached Schedule 2.
Date of commencement of approval:	This approval commences on the date of the approval (12 September 2013).
Date approval is liable to lapse	5 years from the date of determination unless specified action has been taken in accordance with Section 75Y of the EP&A Act.

PART B - DEFINITIONS

In this approval the following definitions apply:

Act means the *Environmental Planning and Assessment Act, 1979* (as amended).

APZ means Asset Protection Zone

BCA means the Building Code of Australia.

Commission means the Planning Assessment Commission or its successors.

Council means Wyong Shire Council

DCP means Warnervale Town Centre Development Control Plan 2012

Department means the Department of Planning and Infrastructure or its successors.

EA means Environmental Assessment report

Environmental Assessment means the document titled Warnervale Town Centre Civic Precinct Environmental Assessment dated August 2011

Minister means the Minister for Planning and Infrastructure.

OEH means Office of Environment and Heritage or its successors

PPR means Preferred Project Report

Preferred Project Report means the document titled 'Preferred Project Report prepared by TPG dated October 2012'

Project means development that is declared under Section 75B of the Act to be a project to which Part 3A of the Act applies.

Proponent means the person proposing the carry out of development comprising all or any part of the project, and includes persons certified by the Minister to be the proponent.

RailCorp means RailCorp or its successors

Woolworths Retail Facility, Warnervale Town Centre
MP 10_0195

Recommended Conditions of Approval

Regulations means the *Environmental Planning and Assessment Regulations, 2000* (as amended).

Revised PPR means the document prepared by TPG dated 5 April 2013 amending the PPR, with the title 'Major Project Application No. 10_0195 - Warnervale Town Centre - Woolworths Retail Development at the Corner of Nikko Road and Hakone Road, Warnervale - Additional Response', and the document prepared by TPG dated 29 April 2013 further amending the PPR, with the title "Major Project Application No. 10_0195 - Warnervale Town Centre - Woolworths Retail Development at the corner of Nikko Road and Hakone Road, Warnervale - Additional Response"

RFS means Rural Fire Service or their successors

RMS means the Roads and Maritime Services or their successors

SEPP MD means the State Environmental Planning Policy (Major Development) 2005

Statement of Commitments means the Revised Statement of Commitments (as they apply to this project) made by the proponent in Appendix H of the PPR.

TSC Act means the *Threatened Species Conservation Act 1995*

UrbanGrowth NSW means UrbanGrowth NSW or their successors

Woolworths Retail Facility, Warnervale Town Centre
MP 10_0195

Recommended Conditions of Approval

SCHEDULE 2

CONDITIONS OF APPROVAL FOR WOOLWORTHS RETAIL FACILITY PROJECT APPLICATION NO MP10_0195

PART A- ADMINISTRATIVE CONDITIONS

A1. Development Description

Approval is granted only to carrying out the development described in detail below:

- Retail facility with a total Gross Floor Area of 33,112m² comprising:
 - 22,092m² of retail floor space (including 1,892m² of bulky goods retail);
 - 3,608m² of commercial floor space ;
 - 3,742m² of entertainment uses (cinema); and
 - 3,669m² for circulation space/mall and amenities, toilets etc.
- Car parking totalling 1,524 spaces including 1,283 basement car parking spaces, at grade commuter car park comprising 225 spaces, and on street parking for 16 cars.
- 'Civic Square' straddling the proposed Main Street with a total area of 2,852m² (including the roadway) and 2,481m² (excluding the roadway).
- Site preparation and bulk earthworks.
- Road construction within the site including Road W06 and Road W05, and road works outside the site including the roundabout on Road W05, and Road W08.
- Associated infrastructure works and servicing, including subdivision.
- Use and fit out within the buildings of the proposed Woolworths Supermarket and BIG W Discount Department Store.
- Site remediation and landscaping.

A2. Development in Accordance with Plans and Documentation

The development will be undertaken in accordance with the following documentation:

Warnervale Town Centre Civic Precinct Environmental Assessment dated August 2011, as amended by the Preferred Project Report prepared by TPG dated October 2012 (including the Statement of Commitments), as further amended by the additional response prepared by TPG dated 5 April 2013, and as further amended by the additional response prepared by TPG dated 29 April 2013, except as modified by the conditions of this approval. A table of approved plans and reports is provided in Schedule 4 of this approval.

A3. Inconsistencies between Document

In the event of any inconsistency between conditions of this approval and the drawings / documents referred to above, the conditions of this approval prevail.

A4. Lapsing of Approval

The project approval will lapse 5 years after the approval date in Part A of Schedule 1 of this project approval unless specified action has been taken in accordance with Section 75Y of the Act.

A5. Compliance with Relevant Legislation and Australian Standards

The proponent shall comply with all relevant Australian Standards, Codes (including Building Code of Australia) and Austroads Guides and obtain all necessary approvals required by State and Commonwealth legislation in undertaking the project described in Condition A1, Part A, Schedule 2 of this approval.

A6. Signage

No signage is approved as part of this application. Any signage will require a separate development approval and will be subject to the relevant planning controls applying to the site.

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PART B - PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

B1 Detailed Landscape Plan

A detailed landscape plan for Road W06 and Civic Square is to be prepared and be generally consistent with the Public Open Space objectives and controls of the Warnervale Town Centre Development Control Plan 2012. The plan is to be prepared in consultation with Council and approved by the Certifying Authority prior to issue of a Construction Certificate.

B2 Bicycle End of Trip Facilities

The approved plans are to be amended to include bicycle end of trip facilities (change and shower facilities) for cyclists within the retail facility building close to bicycle storage areas. The amended plans are to be approved by the Certifying Authority prior to issue of a Construction Certificate.

B3 Roads

The following details are to be approved by the Certifying Authority, in consultation with Council prior to issue of a Construction Certificate:

- a) The final design of the roundabout and southern leg (known as Road W08) is to be agreed to by UrbanGrowth. The design of these works should be undertaken in consultation with Council.
- b) Detailed design plans for the approved roads are to be prepared, and include pavement treatment, utility services, stormwater drainage and lighting, in accordance with Council's standards.
- c) The footpath reserve width on the southern side of Road W05 is not to be less than 3.6m.
- d) Road signage and marking details are to be submitted to Council's traffic committee for approval.

B4 Construction Management Plan

A Construction Management Plan (CMP) shall be prepared and is to be approved by the Certifying Authority prior to the issue of the first Construction Certificate. The CMP must:

- a) detail arrangements for vehicle access to the site for construction. Council shall be consulted on the proposed vehicle access routes. In the event that Road W01 is not completed prior to commencement of construction, alternative access arrangements to the development site are to be made in consultation with Council.
- b) identify trees, including species, condition and remedial works, that will be retained on-site and protected during construction work.
- c) detail the type and quantities of construction waste, including excavated soil, and include an estimate of the waste materials that will be re-used or recycled, disposal locations, truck routes etc.
- d) outline a plan of management for the transportation and disposal of soil and ensure the road, kerb, gutter and footpath area adjacent to and nearby the subject site are kept clear of soil and debris.
- e) outline a plan of management for site preparation works including dust controls during bulk earthworks and strategies/clearing protocols that will be implemented on-site to manage vegetation clearance and the impact on local flora and fauna.
- f) document the soil and water management plan (SWMP) to manage stormwater and surface water runoff during the course of construction in accordance with the NSW Office of Environment and Heritage publication "Managing Urban Stormwater Soils and Construction" (Blue Book).
- g) detail the type of plant and construction vehicles that will access the subject site (during earthworks, road works, utility services and building works), identify and number of construction vehicles trips generated by the

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- development and detail strategies to mitigate impacts on the local road network. The traffic management plan shall also have regard to the with the RMS (RTA) manual – 'Traffic Control at Worksites'.
- h) assess construction noise impacts against the relevant criteria contained within the Environmental Noise Control Manual and identify strategies to mitigate noise impacts on surrounding sensitive receivers.
 - i) identify appropriate management procedures in the event that Aboriginal objects or human remains are identified as a result of construction activities within the area.

B5 Utility Services

- a) The agreements of all relevant authorities to extend and connect utility services noting any necessary easements or other approved methods for provision of essential utilities shall be provided to the Certifying Authority prior to the issue of any Construction Certificate.
- b) All internal site utilities, including electricity and telecommunications, shall be undergrounded, where possible.
- c) In regard to the connection to, relocation and/or adjustment of the services affected by the construction and proposed works, any costs in the relocation, adjustment or support of services shall be the responsibility of the proponent.

B6 Stormwater Drainage and Detention

- a) Prior to issue of a Construction Certificate, a detailed stormwater drainage design is to be prepared in consultation with council, UrbanGrowth and RMS, and approved by the Certifying Authority.
- b) Written evidence is to be provided to the Certifying Authority prior to issue of a Construction Certificate to demonstrate that there is agreement between the proponent and UrbanGrowth that the capacity of the stormwater detention pond to be constructed on the land owned by UrbanGrowth is adequate to cater for the stormwater run off from the development.
- c) Evidence is to be provided to the Certifying Authority to demonstrate that the stormwater detention pond will be constructed in time to cater for the runoff for the development. If the stormwater detention pond will not be completed in time or does not have sufficient capacity, alternative arrangements for stormwater run off disposal are to be prepared in consultation with UrbanGrowth and Council and approved by the Certifying Authority.

B7 Bulk Earthworks

Detailed engineering plans for the proposed earthworks are required as part of the Construction Certificate applications and will be required to be consistent with the areas approved under the project application. Details are to be provided prior to issue of a Construction Certificate and include truck routes, disposal locations etc and demonstrating that any offsite disposal locations have approval to receive the material.

B8 Ecology and Biodiversity

A hollow and nest box management plan is to be prepared by a suitably qualified ecologist prior to issue of a Construction Certificate which clearly identifies any active use of hollow bearing trees on the site, relocation sites for wildlife, and recipient sites for replacement nest boxes. The management plan is to provide for the following:

- a) All construction contractors and personnel are to be advised of the importance of conserving No Go Areas as part of their site and OH&S induction program.
- b) No clearing of trees or vegetation or storage of vehicles, fill or materials or access is to occur within retained areas.

B9 Commuter Car Park

- a) The commuter car park is to be designed generally in accordance with the Railcorp Rail Station Commuter Car Park guidelines, and detailed plans be submitted to RailCorp (or their successors) prior to issue of a Construction Certificate for the commuter car park.

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- b) Disabled commuter car spaces are to be within the walkable distance requirements of the Disability Standards for Accessible Public Transport 2002 (Transport Standards).
- c) 225 car spaces are to be provided at grade or a location negotiated with NSW Trains on the site in perpetuity as commuter car parking spaces and be available free of charge for rail passengers.

B10 Works in Proximity to the Rail Corridor

- a) An acoustic assessment is to be submitted to the Principle Certifying Authority prior to the issue of a construction certificate demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads- Interim Guidelines". All recommendations of the acoustic assessment are to be incorporated in the construction documentation.
- b) An Electrolysis/Stray Current Report is to be prepared. The Proponent must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate.
- c) Prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to RailCorp for review and comment on the impacts on rail corridor. The Principle Certifying Authority shall not issue the Construction Certificate until written confirmation has been received from RailCorp confirming that this condition has been satisfied.
- d) Prior to the issuing of a Construction Certificate the proponent is to submit to RailCorp a plan showing all craneage and other aerial operations for the development and must comply with all RailCorp requirements. The Principle Certifying Authority shall not issue the Construction Certificate until written confirmation has been received from RailCorp confirming that this condition has been satisfied.
- e) Where the Proponent proposes to enter the rail corridor, the Principle Certifying Authority shall not issue a Construction Certificate until written confirmation has been received from RailCorp confirming that its approval has been granted. No scaffolding is to be used within 6 horizontal metres of the rail corridor unless prior written approval has been obtained from the RailCorp. The proponent is to note that rock anchors/bolts will not be permitted within RailCorp's adjoining corridor.

B11 Local Contributions

In accordance with Section 94 of the Act, the proponent shall provide the following local infrastructure contributions to Council, prior to the issue of any Construction Certificate:

Item	Value
Stormwater	\$370,016.15
Studies	\$8,160.95
Administration	\$20,595.74
WTC road/intersection works	\$2,123,870
Total payable to council	\$2,522,642.84

Local contributions identified in the Statement of Commitments, and PPR additional response letter prepared by TPG dated 5 April 2013, not included in the above table are still to be provided, along with works in kind for the roads on site (W05, W06 and W08) and the monetary contributions subject to the Entry Road Deed of Agreement.

Should the proponent and Council agree to alternative local developer contributions arrangements or items (e.g. through a Voluntary Planning Agreement), these may replace the contributions specified in the table above only with the agreement of the Director-General of the Department of Planning and Infrastructure, prior to the issue of a Construction Certificate.

The Section 94 contributions are to be recalculated from the date of determination in accordance with movements in the Chain Price Index for Non- Dwelling Building and Construction (CPI), published by the Australian Bureau of Statistics and may be varied with written agreement with Council.

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PART C – PRIOR TO COMMENCEMENT OF WORK

C1 Biodiversity

- a) The following measures are to be implemented prior to commencement of works for the protection of any potential nesting species on the site:
- (i) Trees identified as suitable for nesting should be visually inspected by a tree climber to investigate any evidence of past or present nesting activity by such hollow dependent threatened species, including the Little Lorikeet. Where the chamber is too deep for inspection, a viewing hole in the side of the trunk may be cut by chainsaw. This process is to be undertaken under the guidance of a fauna ecologist. In the absence of signs of nesting activity by these species then these trees can be removed.
 - (ii) Vegetation management for APZ purposes is to be limited to minimise impacts on potential threatened fauna habitat. No more than 50% of the existing canopy should be removed for asset protection purposes. However the understorey is to be fully managed with a maximum retention of up to 20% shrub cover in the understorey. All *Casuarina* trees are to be selectively retained within the APZ i.e. mature fruiting trees, to minimise impacts of foraging Glossy Black-Cockatoo.
 - (iii) Removal of hollow-bearing trees is to be conducted under the supervision of a fauna ecologist to ensure appropriate animal welfare procedures are taken, particularly for Flora and Fauna Assessment (A13004F) 45 threatened species. Hollows of high quality or with fauna recorded residing within should be sectionally dismantled and all hollows should be inspected for occupation, activity and potential for reuse.
 - (iv) Any wildlife that is captured or removed by the fauna ecologist is to be relocated into adjoining protected Council reserves.
 - (v) Good quality hollows are to be relocated or replaced by robust nest boxes with a long life span within proposed open space areas and/or reserves within the surrounding lands.
 - (vi) Standard *Phytophthora cinnamomi* protocol applies to the cleaning of all plant, equipment, hand tools and work boots prior to delivery onsite to ensure that there is no loose soil or vegetation material caught under or on the equipment and within the tread of vehicle tyres. Any equipment onsite found to contain soil or vegetation material is to be cleaned in a quarantined work area or wash station and treated with anti-fungal herbicides.
- b) Inspections of tree hollows are to be carried out in relation to forest owl habitat during the owl breeding season, as a number of trees with nesting hollows very suitable for owl breeding have been found on the site or in close vicinity. An assessment of the potential use of tree hollows by Little Lorikeets for breeding is also to be carried out.
- c) All weeds are to be removed from the development site, and not be limited to noxious species.

C2 Bushfire Protection

Prior to commencement of works on site, the recommendations of the Bushfire Protection Assessment prepared by Travers Bushfire and Ecology dated February 2013 are to be implemented including:

- a) A temporary 30m APZ, measured from the exposed wall of the commercial buildings toward the hazardous vegetation, is to be provided, within Lot 1 DP 376264. Documentation is to be submitted to approved by Council (the owner of the land) prior to commencement of work to identify the hazardous areas to be managed, the scope of the works required, the frequency of the works, the objectives of the works as well as the monitoring of works. This will also include the provision of a temporary fire trail. If an agreement is not provided by Council, the proponent is to identify an alternative solution, in consultation with NSW Rural Fire Service, and approved by the Certifying Authority.
- b) A hydrant water supply to be installed in accordance with Australian Standard AS 2419.1

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C3 Site Contamination Remediation

The site shall be made suitable for the approved development in accordance with the recommendations identified in (Stage 2 report by Coffey Geotechnics dated 28 November 2011), in particular:

- a) The Asbestos Containing Materials (ACM) observed around the former building area is to be removed by "emu-picking". An AS1 or AS2 licensed removal contractor (licensed with NSW WorkCover) will be required to undertake this work. The work will need to be carried out in accordance with an asbestos removal plan (ARP);
- b) The water and upslope/spillway soils in Dam 2 are sampled and analysed to confirm the presence of Total Petroleum Hydrocarbons (TPH), as recommended in the Stage 2 ESA report. Should TPH contamination be confirmed, the water would require treatment for disposal prior to development.
- c) The section of the southern wall of Dam 2 which has eroded away should be restabilised to lessen the impact downgradient.

C4 Dilapidation Report

A dilapidation report shall be prepared by a suitably qualified professional, documenting local roads within the Warnervale Town Centre site that will be used for construction access and include a photographic record to be submitted to council before commencement of works.

The photographic report must include clear images of the kerb and gutter, road carriageway, and all other existing infrastructure along each road to be used for construction access. Each image is to be labelled to identify the elements depicted, the direction that the image is viewed towards, and include the name of the relevant street frontage. A summary report must be submitted in conjunction with the images detailing the project description, identifying any apparent existing defects, detailing the date and authorship of the photographic record, the method of documentation and limitations of the photographic record.

C5 Works in Proximity to the Rail Corridor

For any works that involve ground penetration of greater than 2m in depth and within 25m of the rail corridor, the proponent shall provide a Geotechnical Engineering report and construction methodology to RailCorp for review by RailCorp's Geotechnical section prior to the commencement of works. The report shall demonstrate that the development has no negative impact on the rail corridor or the integrity of the infrastructure through its loading and ground deformation and shall contain structural design details/analysis for review by RailCorp. The report shall include the potential impact of demolition and excavation, and demolition- and excavation-induced vibration in rail facilities, and loadings imposed on RailCorp Facilities by the development.

PART D – DURING CONSTRUCTION

D1 Construction Certificate

The relevant Construction Certificate is to be issued by the Certifying Authority prior to commencement of any works. The application for this Certificate is to satisfy all of the requirements of the Environmental Planning and Assessment Regulation 2000.

D2 Sediment and Erosion Control

During construction, all sediment and erosion control structures shall be installed, in accordance with the NSW Department of Housing / Landcom "Managing Urban Stormwater – Soils and Construction" (Blue Book) to the satisfaction of the Certifying Authority.

D3 Construction Hours

- a) All construction work shall be restricted to between 7:00am and 6:00pm Mondays to Fridays, and between 8:00am and 5:00pm Saturdays. No construction work shall take place on Sundays or public holidays.
- b) Construction outside the hours stipulated above is permitted only where it is required in an emergency to avoid the loss of lives, property and/or to prevent environmental damage and the Certifying Authority has been notified.

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D4 Approved Plans to be On Site

A copy of the approved and certified plans, specifications and documents incorporating conditions of approval and certification shall be kept on the site at all times and shall be readily available for review by the Certifying Authority.

D5 Erosion and Sediment Control

All erosion and sediment control measures are to be effectively maintained at or above design capacity for the duration of the construction works and until such time as all ground disturbed by the works has been stabilised and rehabilitated so that it no longer acts as source of sediment.

D6 Dust Control Measures

The proponent shall ensure that dust suppression is undertaken in the form of constant water spraying or other natural based proprietary dust suppressant to ensure that dust caused by vehicles moving along the road and/or within the site does not cause a nuisance to surrounding properties to the satisfaction of the Certifying Authority.

D7 Waste Management

All waste generated by the development shall be disposed to a facility to receive such waste. Hazardous materials including asbestos and lead shall be disposed of in accordance with WorkCover requirements and relevant Australian Standards. Any asbestos waste generated by the development must be disposed of in accordance with the requirements of Clause 42 of the Protection of the Environmental Operations (Waste) Regulation 2005.

D8 Aboriginal Cultural Heritage

- a) The proponent must continue to consult with and involve all the registered Aboriginal parties for the project in the ongoing management of the Aboriginal cultural heritage values. Evidence of this consultation must be collated and provided to the consent authority upon request.
- b) In the event that surface disturbance identifies a new Aboriginal object, all works must halt in the immediate area to prevent any further impacts to the object(s). A suitably qualified archaeological specialist and representatives of the local Aboriginal community must be contacted to determine the nature, extent and significance of the object(s). The site is to be registered in the Aboriginal Heritage Information Management System (AHIMS) (managed by OEH) and the management outcome for the site included in the information provided to the AHIMS. The proponent will consult with representatives of the local Aboriginal community, and the archaeological specialist to develop and implement management strategies for all objects/sites. If impacts are unavoidable, mitigation measures are to be undertaken in accordance with the Aboriginal heritage component of the Construction Management Plan. All sites impacted must have an Aboriginal Site Impact Recording form completed and be submitted to the AHIMS Registrar within three months of completion of these works.
- c) If human remains are located in the event that surface disturbance occurs, all works must halt in the immediate area to prevent any further impacts to the remains. The NSW Police are contacted immediately. No action is to be undertaken until the NSW Police provide written notification to the proponent. If the skeletal remains are identified as Aboriginal, the proponent must contact the Environment Line on 131 555 and representatives of the local Aboriginal community. No works are to continue until OEH provides written notification to the proponent.
- d) An Aboriginal Cultural Education Induction Program must be developed for the induction of all personnel and contractors involved in the construction activities on site. Records are to be kept of which staff/contractors were inducted and when for the duration of the project.

D9 Works in Proximity to the Rail Corridor

- a) The proponent is to note that rock anchors/bolts will not be permitted within RailCorp's property or easements.
- b) No metal ladders, tapes and plant/machinery, or conductive material are to be used within 6 horizontal metres of any live electrical equipment. This applies to the train pantographs and catenary, contact and pull-off wires of the adjacent tracks, and to any aerial power supplies within or adjacent to the rail corridor.

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- c) No work is permitted within the rail corridor, or its easements, at any time unless prior approval or an Agreement has been entered into with RailCorp.

PART E - PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

E1 Works as Executed Plans

Prior to issue of any Occupation Certificate, one (1) full set of works as executed plans, and other supporting documentation including further studies and revised plans required by this approval, shall be submitted to Wyong Shire Council for information purposes only.

E2 Road Construction

- a) Land within the site required for the construction of Road W01 shall be dedicated to council free of cost prior to issue of an Occupation Certificate.
- b) The proponent shall be responsible for the construction of the sections of Roads W05, W06 and W08 as shown on Drawing No. A00.11 PPR-5 dated 18/04/2013, as well as footpaths. These works are to be completed by the proponent prior to issue of an Occupation Certificate.
- c) Road W01 shall be completed by others and constructed prior to issue of an Occupation Certificate.
- d) Documentation is to be provided for the Certifying Authority that the access arrangements to the basement car park and loading docks from Road W05, including turning circles, comply with the Austroads standards.
- e) All roads constructed under this approval are to be constructed to Wyong Shire Council's engineering requirements

E3 Stratum Subdivision

Prior to the issue of an Occupation Certificate, a plan of Stratum Subdivision is to be prepared for road W06 (Main Street) and the basement car park beneath, to provide for the following:

- a) A stratum lot for the basement car park limited in height to the top of the car park structure.
- b) A stratum lot for Road W06 (including, kerbs and gutters for the full length of the road, and including through Civic Square), is to be dedicated to council. An easement over the adjoining footpaths and under the road to a minimum depth of 1 m, is also to be provided to allow council to access any drainage infrastructure and services under the road and footpaths.
- c) The stratum subdivision plan shall be consistent with the Works as Executed drawings. The Stratum Subdivision plan and all relevant easements shall be lodged with Land and Property Information for registration prior to issue of an Occupation Certificate.

E4 Civic Square

- a) Civic Square and the footpaths along Road W06 shall be publicly accessible 24 hours a day seven days a week.
- b) The maintenance of Civic Square, including the pavement, lighting, landscaping and furniture, shall be the responsibility of the proponent.
- c) An access agreement with the council is to be in place prior to the issue of any Occupation Certificate. The agreement is to allow the council to hold 12 community events each calendar year on the part of Civic Square north of Main Street (Road W06), for a peppercorn rent, with appropriate allowance for setup and dismantling of the event.

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E5 Dedication of Roads

All roads constructed within Lot 521 DP 594725 subject to this approval, are to be dedicated to Wyong Shire Council, free of cost to council, prior to the issue of an Occupation Certificate.

E6 Landscaping Works

All landscaping works are to be completed and certified prior to the issue of an Occupation Certificate.

ADVISORY NOTES

AN1 Roads Act, 1993

A separate application for approval under Section 138 of the Roads Act, 1993 shall be made to undertake any of the following:

- (1) erect a structure or carry out a work in, on or over a public road, or
- (2) dig up or disturb the surface of a public road, or
- (3) remove or interfere with a structure, work or tree on a public road, or
- (4) pump water into a public road from any land adjoining the road, or
- (5) connect a road (whether public or private) to a classified road.

AN2 Stormwater Drainage Works or Effluent Systems

Any approvals for water supply or sewerage are to be obtained from council in accordance with the relevant legislation. Any contributions required for the works are to be paid to Council.

AN3 Water Licensing

An authorisation under the Water Act 1912 or the Water Management Act 2000 is to be obtained from the NSW Office of Water (NOW) with the appropriate purpose identified should any activity relating to the taking of or interception of groundwater be proposed.

AN4 Pedestrian Ramp

No approval is granted as part of this application for the pedestrian switch-back ramp between Main Street and the Hill Top Park. A separate Development Application is required for the construction of the ramp.

AN5 Vehicle Access

The loading docks and car parks must be configured to allow a vehicle to be driven onto and off the site in a forward direction. Access is to be provided to the lifts in the commercial premises in the south-western corner of the retail facility from the Level CP 3 car park. Security measures, such as electronic security cards, should be provided as necessary to limit access to these premises.

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SCHEDULE 3

PROPONENT'S STATEMENT OF COMMITMENTS



WARNERVALE TOWN CENTRE CIVIC PRECINCT – REVISED STATEMENT OF COMMITMENTS – OCTOBER 2012

ITEM NUMBER	COMMITMENT	TIMING
Statutory Requirements		
1	<p>Fabcot will obtain and maintain the following licences, permits and approvals for the development:</p> <ul style="list-style-type: none"> • Construction Certificates for engineering works (including earthworks, roadworks, drainage, landscape, water supply, and sewerage); • Occupation Certificates; • Roads and Traffic Authority Road Occupancy Licence; • Road Opening Permit; • Section 138 Consent for roadworks (Roads Act 1993); • Energy Australia Design Certification; • Energy Australia notification of Arrangement; • Teistra Compliance Certificate; • Wyong Water Compliance Certificate; • Department of Land and Property Information registration of the 88B Instrument. 	<p>Prior to the construction within the development, and as required from time to time.</p>
Conveyancing		
2	<p>Fabcot will prepare a Section 88B instrument. The Section 88B instrument will provide easements for utility services that encroach onto private land or public reserve and permanent public access 24 hours, 7 days a week along Main Street.</p>	<p>Registration prior to the issue of the final Occupation Certificate. Note part of this will be achieved as incorporated into the Access Deed between Landcom, Council and Fabcot.</p>



WARNERVALE TOWN CENTRE CIVIC PRECINCT – REVISED STATEMENT OF COMMITMENTS – OCTOBER 2012

ITEM NUMBER	COMMITMENT	TIMING
Construction		
3	<p>Fabcot will prepare a Construction Management Plan that will include:</p> <ul style="list-style-type: none"> • An education strategy for construction contractors; • Description of the work program outlining relevant timeframes for activities. • Details of statutory and other obligations that must be met during construction and operation, including all approvals and agreements required from authorities and other stakeholders. • Description of the roles and responsibilities for all relevant employees involved in the construction phase. • Details of the environmental management procedures, monitoring and reporting requirements during the construction or operation phase. • Details as to what incident management procedures will be undertaken during construction or operation. • The minimisation of rubbish and debris at the site from development activities during the construction phase. 	<p>During construction in accordance with a detailed waste management plan prepared by the appointed builder.</p> <p>Prior to the issue of the relevant Construction Certificate for the development.</p>
4	<p>Fabcot will prepare work as executed plans for construction work and provide such plans to Wyong Shire Council.</p>	<p>Prior to the release of the Final Occupation Certificate.</p>
5	<p>Fabcot will prepare works as executed plans in a format compatible with the geographic information system (GIS) of Wyong Shire Council to assist with the Council asset management database.</p>	<p>Prior to the release of the Final Occupation Certificate.</p>



WARNERVALE TOWN CENTRE CIVIC PRECINCT – REVISED STATEMENT OF COMMITMENTS – OCTOBER 2012

ITEM NUMBER	COMMITMENT	TIMING
Fire Management		
6	Fabcot will install fire hydrants in accordance with Australian Standard S2419.1-2005.	To be detailed in within the relevant Construction Certificate application and installed prior to the release of the Final Occupation Certificate.
Water Supply and Quality Management		
7	Fabcot will design and install water quality control measures in accordance with the Drawings prepared by Mott McDonald contained in the PPR prepared by TPG dated October 2012.	Design details to be provided prior to the release of the relevant Construction Certificate.
8	Fabcot will undertake to carry out further analysis of the most appropriate design of the drainage including detailed designs of the piped drainage system.	Prior to commencement of construction of the proposed development.
9	Fabcot will undertake to carry out further design work on the major/minor stormwater system with the Construction Certificate to ensure that: <ul style="list-style-type: none"> • A minor drainage system is designed to cater for all events up to and including the 1 in 10 year ARI design storm for the retail and commercial areas; and • A major drainage system is designed to safely convey flows in a 1 in 100 year ARI design floor 	Design details to be provided prior to the release of the relevant Construction Certificate.



WARNERVALE TOWN CENTRE CIVIC PRECINCT – REVISED STATEMENT OF COMMITMENTS – OCTOBER 2012

ITEM NUMBER	COMMITMENT	TIMING
10	Fabcoot will implement soil and water management plans to control runoff during construction in accordance with the principles included in the information prepared by Mott MacDonald contained in the PPR prepared by TPG dated October 2012 and The Blue Book, Managing Urban Stormwater: Soils and Construction, Landcom, 4th Edition, 2004.	Prior to the release of the relevant Construction Certificate.
Public Safety		
11	Fabcoot will ensure that the water quality design will include measures to protect public.	Design details to be provided prior to the release of the relevant Construction Certificate.
12	Fabcoot will engage centre management staff to ensure that the public spaces and amenities within Fabcoot's ownership and control are maintained in a good and clean condition.	Prior to the commencement of the use.
Cultural Heritage		
13	Fabcoot will inform the Local Aboriginal Land Council of progress of the development.	Ongoing through the construction of the development.
14	Fabcoot will engage the local community and facilitate employment opportunities where possible between contractors and the Aboriginal community.	Ongoing through the construction of the development and post completion.
Infrastructure		
15	Fabcoot will provide reticulated water supply, sewerage and underground electricity to the development.	Prior to the release of the Final Occupation Certificate.



WARNERVALE TOWN CENTRE CIVIC PRECINCT – REVISED STATEMENT OF COMMITMENTS – OCTOBER 2012

ITEM NUMBER	COMMITMENT	TIMING
16	Fabcot will provide for infrastructure services generally in accordance with sewer reticulation, water reticulation, electrical & communications, drainage, services footway GSM & CDMA Concept Plans prepared by Mott MacDonald.	Prior to the release of the Final Occupation Certificate.
Roads		
17	Fabcot will design and construct flexible road pavements generally in accordance with the Australian Road Research Board design criteria and Wyong Shire Council DCP requirements.	Prior to the release of the Final Occupation Certificate for each stage.
18	Fabcot will design and construct rigid road pavements in accordance with the Cement and Concrete Association design guidelines.	Prior to the release of the Final Occupation Certificate for each stage.
19	Fabcot will ensure that the AUSTRROADS Design Service Vehicle (19 metre) can negotiate all public roads and intersections and that the AUSTRROADS Long Rigid Bus (14.5metre) can negotiate all bus routes.	Prior to the release of the Final Occupation Certificate for each stage.
20	Fabcot will design and construct foot and cycle paths as documented in the PPR.	Prior to the release of the Final Occupation Certificate by the Wyong Shire Council or an accredited certifier for each stage.
21	Fabcot will reconstruct Main Street generally in accordance with the Main Street Road Layout Plan and Typical Sections prepared by Mott MacDonald, including street tree planting, car parking, bus stops, paving treatments.	Prior to the issue of the Final Occupation Certificate for the development.
22	Fabcot will provide street signs for each new public road in accordance with the requirements of the Wyong Shire Council.	Prior to the release of the Final Occupation Certificate by Wyong Shire Council or accredited certifier for each stage.
23	Fabcot will pay Section 64 water and sewer developer contributions in accordance with the development servicing plan applicable at the time of	Prior to the issue of a Construction Certificate.

210.065 WTC PPR



WARNERVALE TOWN CENTRE CIVIC PRECINCT – REVISED STATEMENT OF COMMITMENTS – OCTOBER 2012

ITEM NUMBER	COMMITMENT	TIMING
	payment.	
Roads		
24	Land for Roads, in accordance with the information contained in the PPR being a stratum subdivision arrangement will be ceded to, and at nil cost to the Council.	As soon as practicable after practical completion of the road construction works or the issue of the final Occupation Certificate.
Car Parking Design		
25	Fabcot will construct the internal car parking areas in accordance with the specifications of Wyong Shire Council's DCP.	Details to be provided with the Construction Certificate.
26	Fabcot will provide a taxi call system for customers of the development.	To be provided prior to the issue of the final occupation certificate.
Developer Contributions		

210.055 WTC PPR



WARNERVALE TOWN CENTRE CIVIC PRECINCT – REVISED STATEMENT OF COMMITMENTS – OCTOBER 2012

ITEM NUMBER	COMMITMENT	TIMING										
27	<p>Fabcot will provide the following infrastructure works. Fabcot will manage the design and construction of the following items in line with completion of the first stage of the development:</p> <p>No VPA is proposed or required with Council.</p> <table border="1" data-bbox="566 846 1246 1691"> <thead> <tr> <th data-bbox="574 1041 614 1691">INFRASTRUCTURE ITEMS</th> <th data-bbox="574 846 614 1041">VALUE</th> </tr> </thead> <tbody> <tr> <td data-bbox="630 1041 853 1691">Design and construction of Roads & cycleways W05; W06; W08, to facilitate completion of public road network. Includes preliminaries; clearing and demolition; erosion and sediment control; earthworks; storm water drainage (internal to site); road pavement; kerbs and miscellaneous concrete works; verges treatment; incidental works (signage, line marking, laying of Teistra and gas conduit in common electrical trench); sewerage reticulation; water reticulation; fees</td> <td data-bbox="630 846 853 1041">\$3.63 million</td> </tr> <tr> <td data-bbox="869 1041 989 1691">Land Dedication of land as shown in PPR Appendix A Drawing A00.11 PPR-1 for part of Roads, W01, W06 (stratum subdivision) and W05</td> <td data-bbox="869 846 989 1041">Fabcot Legal and Subdivision Costs TBC</td> </tr> <tr> <td data-bbox="1005 1041 1125 1691">As per tri-partite agreement (Fabcot, Wyong Council and Landcom) – management and funding contribution toward the design, approval and construction of the access road from Sparks road to roundabout to the station</td> <td data-bbox="1005 846 1125 1041">\$1.6 million</td> </tr> <tr> <td data-bbox="1141 1041 1246 1691">Bus Stop, Kiss & Ride and Cycle in Main Street</td> <td data-bbox="1141 846 1246 1041">Part of Main Street Costs above Road W06</td> </tr> </tbody> </table>	INFRASTRUCTURE ITEMS	VALUE	Design and construction of Roads & cycleways W05; W06; W08, to facilitate completion of public road network. Includes preliminaries; clearing and demolition; erosion and sediment control; earthworks; storm water drainage (internal to site); road pavement; kerbs and miscellaneous concrete works; verges treatment; incidental works (signage, line marking, laying of Teistra and gas conduit in common electrical trench); sewerage reticulation; water reticulation; fees	\$3.63 million	Land Dedication of land as shown in PPR Appendix A Drawing A00.11 PPR-1 for part of Roads, W01, W06 (stratum subdivision) and W05	Fabcot Legal and Subdivision Costs TBC	As per tri-partite agreement (Fabcot, Wyong Council and Landcom) – management and funding contribution toward the design, approval and construction of the access road from Sparks road to roundabout to the station	\$1.6 million	Bus Stop, Kiss & Ride and Cycle in Main Street	Part of Main Street Costs above Road W06	Prior to the issue of the Final Occupation Certificate.
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WARNERVALE TOWN CENTRE CIVIC PRECINCT – REVISED STATEMENT OF COMMITMENTS – OCTOBER 2012

ITEM NUMBER	COMMITMENT	TIMING														
	<table border="1"> <tr> <td data-bbox="416 1037 480 1688">Provision of commuter car parking (177 spaces at-grade)</td> <td data-bbox="416 846 480 1037">\$1.03 million</td> </tr> <tr> <td data-bbox="480 1037 544 1688">Civic square – design, construction and landscape embellishment of civic square</td> <td data-bbox="480 846 544 1037">\$675,000</td> </tr> <tr> <td data-bbox="544 1037 608 1688">Contribution towards Stormwater Connections</td> <td data-bbox="544 846 608 1037">\$300,000</td> </tr> <tr> <td data-bbox="608 1037 671 1688">Public Art</td> <td data-bbox="608 846 671 1037">\$150,000</td> </tr> <tr> <td data-bbox="671 1037 735 1688">Contribution towards Traffic signal I11</td> <td data-bbox="671 846 735 1037">\$250,000</td> </tr> <tr> <td data-bbox="735 1037 799 1688">Contribution towards Traffic signal I31</td> <td data-bbox="735 846 799 1037">\$250,000</td> </tr> <tr> <td data-bbox="799 1037 847 1688">Consultant and Project Management Fees for above</td> <td data-bbox="799 846 847 1037">\$475,000</td> </tr> </table>	Provision of commuter car parking (177 spaces at-grade)	\$1.03 million	Civic square – design, construction and landscape embellishment of civic square	\$675,000	Contribution towards Stormwater Connections	\$300,000	Public Art	\$150,000	Contribution towards Traffic signal I11	\$250,000	Contribution towards Traffic signal I31	\$250,000	Consultant and Project Management Fees for above	\$475,000	
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Acoustics																
28	Fabcot will provide a detailed report on acoustics and vibration in relation to the proximity of the proposed development to the railway line.	Details to be provided prior to the release of the relevant Construction Certificate.														
Accessibility																
29	Fabcot will review the design of the development to incorporate any recommendations provided by their accessibility consultant to ensure that matters of ingress & egress, paths of travel, transport linkages, lighting and signage are compliant with AS148.1, AS1428.2, AS1428.4 and to ensure that the overall design complies with the Disability Discrimination Act. Detailed plans showing compliance with the recommendations of the Accessibility Report will be provided within the Construction Certificate.	Details to be provided prior to the release of the relevant Construction Certificate.														

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WARNERVALE TOWN CENTRE CIVIC PRECINCT – REVISED STATEMENT OF COMMITMENTS – OCTOBER 2012

ITEM NUMBER	COMMITMENT	TIMING
Sustainability 30	<p>Fabcoot will further develop the sustainable strategies for the development to achieve ESD outcomes:</p> <ul style="list-style-type: none"> The buildings will designed against Section J of the Building Code of Australia to assess energy performance of the façade, and minimum efficiency performance requirements for mechanical, electrical and hydraulics plant. 	<p>Sustainability measures will be investigated further during the detailed design development of the proposal with selected measures being incorporated into the relevant Construction Certificate plans before the issue of the relevant Construction Certificate.</p>

Woolworths Retail Facility, Warnervale Town Centre
MP 10_0195

Recommended Conditions of Approval

SCHEDULE 4

TABLE OF APPROVED PLANS AND REPORTS

Warnervale Town Centre Stage 1 Project Application Information Submitted to Department of Planning & Infrastructure			
Architectural Drawings	Prepared by BN Group Pty Ltd		
Drawing no	Issue	Name of Plan	Date
A00.01	PPR- 3	Title Sheet - Location	27/3/13
A00.10	PPR- 4	Lot & Boundary Plans proposed & indicative future Roads	27/3/13
A00.12	PPR- 1	Ref. Impacted Areas	27/3/13
A04.13	PPR- 4	Proposed Floor Plan – GL Retail Level	27/3/13
A200.10	PPR- 4	Lot & Boundary Plans Indicative Future Works	27/3/13
A04.10	PPR- 3	Proposed Floor Plan CP3 & Loading	19/02/2013
AO4.11	PPR- 3	Proposed Floor Plan CP2	19/02/13
A04.12	PPR- 3	Proposed Floor Plan CP1	19/3/13
A04.15	PPR- 2	Proposed Floor – Cinema Level	11/2/13
A04.20	PPR- 2	Proposed Roof Plan	11/2/13
A04.25	PPR- 1	Proposed Awning Plan	11/2/13
A10.01	PPR- 3	Proposed Elevations North & South	19/2/13
A10.02	PPR- 3	Proposed Elevations East & West	19/2/13
A00.20	PPR- P2	Excavation Estimate	19/2/13
A00.21	PPR- 2	Road Grading Elevations	11/2/13
A10.81	PPR- 2	Perspective Impressions	21/2/13
A10.82	PPR- 2	Perspective Impressions	21/2/13
A100.20	PPR- 3	GFA & Car Parking Analysis	19/2/13
A11.01	PPR- 3	Proposed Sections	19/2/13
Appendix B	Prepared by: Travers Bushfire & Ecology	Flora & Fauna Assessment Update	April 2013
Appendix C	Prepared by: Mott MacDonald	Updated Initial Infrastructure Assessment	March 2013
10S183C- MPEA105	Prepared by: Mott MacDonald	Road Services Cross Sections and Detail	26/3/13
10S183C-MPEA 106	Prepared by: Mott MacDonald	Constraints & Opportunities Master Plan	26/3/13
10S183C MPEA 108	Prepared by: Mott MacDonald	Road grading Longitudinal Sections Sheet 1 of 2	26/3/13

Woolworths Retail Facility, Warnervale Town Centre
MP 10_0195

Recommended Conditions of Approval

10S183C MPEA 109	Prepared by: Mott MacDonald	Road grading Longitudinal Sections Sheet 2 of 2	26/3/13
10S183C MPEA110	Prepared by: Mott MacDonald	Stormwater Management Philosophy	26/3/13
10S183C MPEA 111	Prepared by: Mott MacDonald	Stormwater Layout Master Plan Sheet 1 of 2	26/3/13
10S183C MPEA 112	Prepared by: Mott MacDonald	Stormwater Layout Master Plan Sheet 2 of 2	26/3/13
10S183C MPEA 113	Prepared by: Mott MacDonald	Road Turning Circles	26/3/13
10S183C MPEA114	Prepared by: Mott MacDonald	Road W01 Turning Circles	26/3/13
Ref 10s183	Mott MacDonald - Phil McBride	Letter re Stormwater Quality Management	26/3/13
Appendix D Ref TR/7874/fj	Prepared by: Colston Budd Hunt & Kafes Pty Ltd	Report re Roundabout Traffic Review	27/3/13
Appendix E	Prepared by: Travers Bushfire & Ecology	Bushfire Protection Assessment	February 2013
	Prepared by: Travers Bushfire & Ecology	Schedule 1 – Plan Bushfire Protection Measures	12/2/13
Appendix F	Prepared by: Rider Levett Bucknall	Public Domain Works Costing	March 2013
	Prepared by: Rider Levett Bucknall	Quantity Surveyors Certificate	27 March 2013
Appendix G	Prepared by: Fabcot	Council Submission letter	1 February 2013